

**JOURNAL**  
of the  
**Malayan Branch**  
of the  
**Royal Asiatic Society**

(Covering the territories of the Federation of Malaya, the  
Colonies of Singapore, Sarawak and North Borneo, and the  
State of Brunei)

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**Vol. XXI ,**  
**1948**

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SINGAPORE:  
MALAYA PUBLISHING HOUSE, LIMITED

1948.

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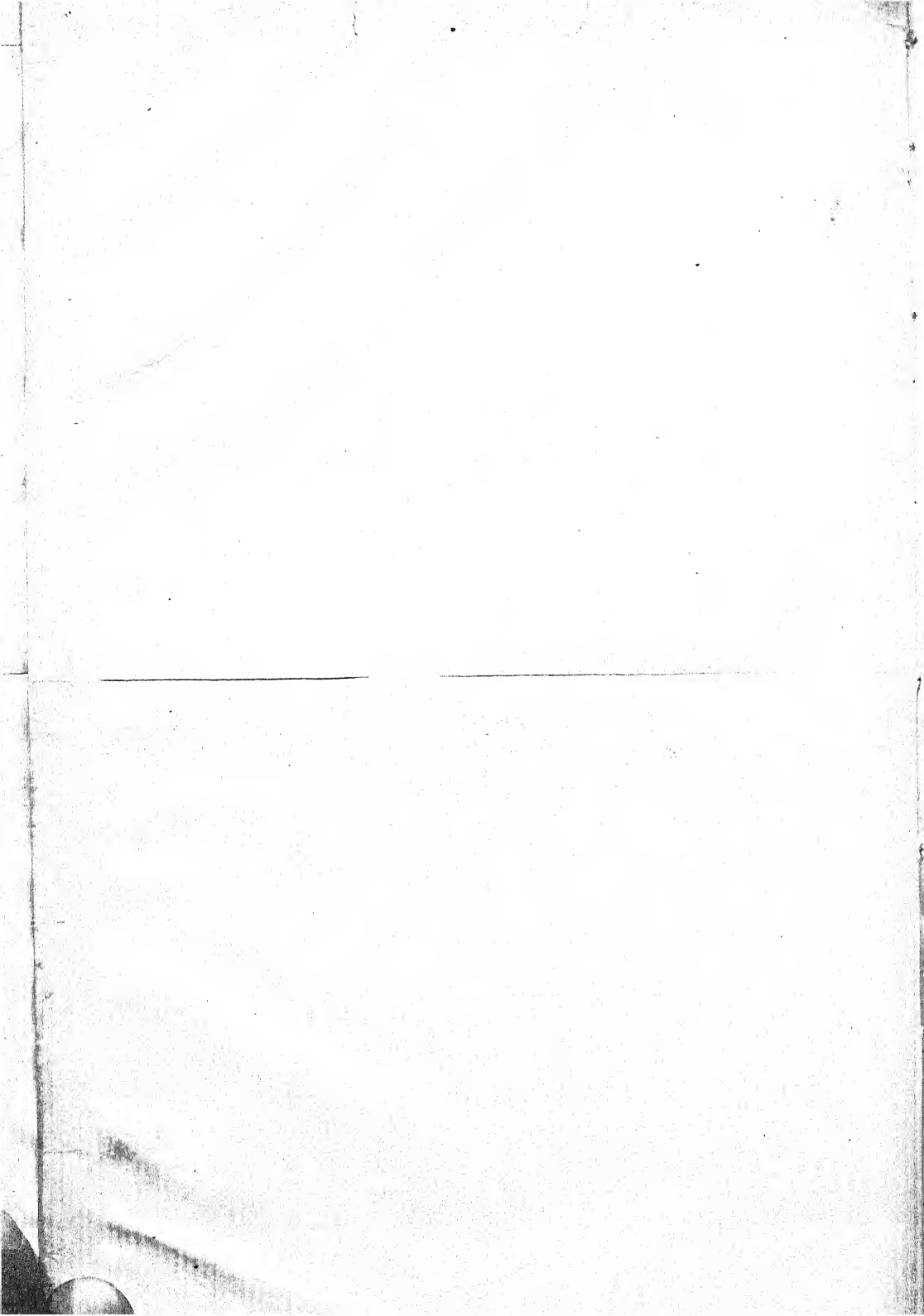


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**Vol. XXI.**

**Part I.**

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and the State of Brunei)**

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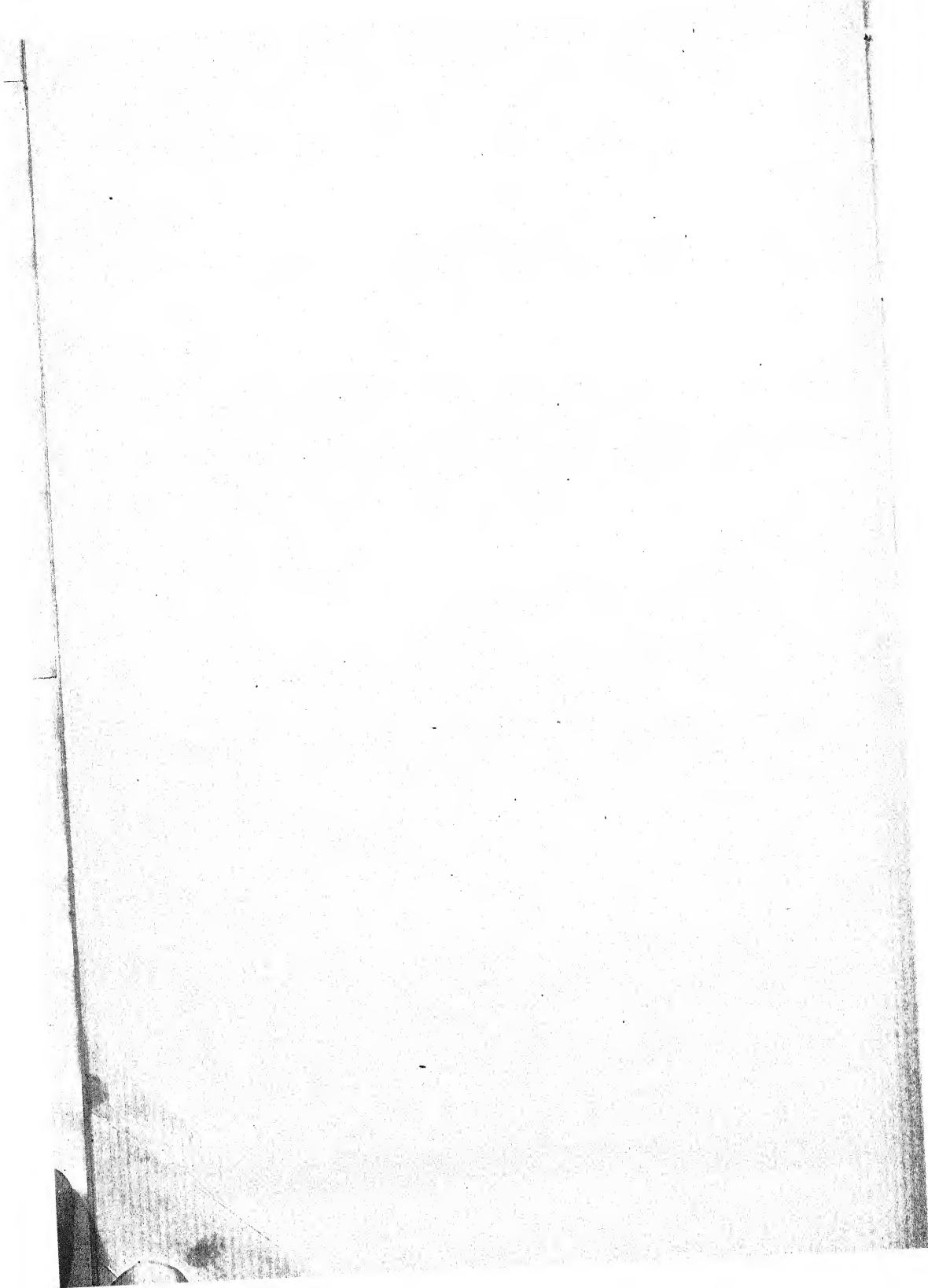
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**April 1948**

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**SINGAPORE**  
**Malaya Publishing House, Limited**  
**1948**



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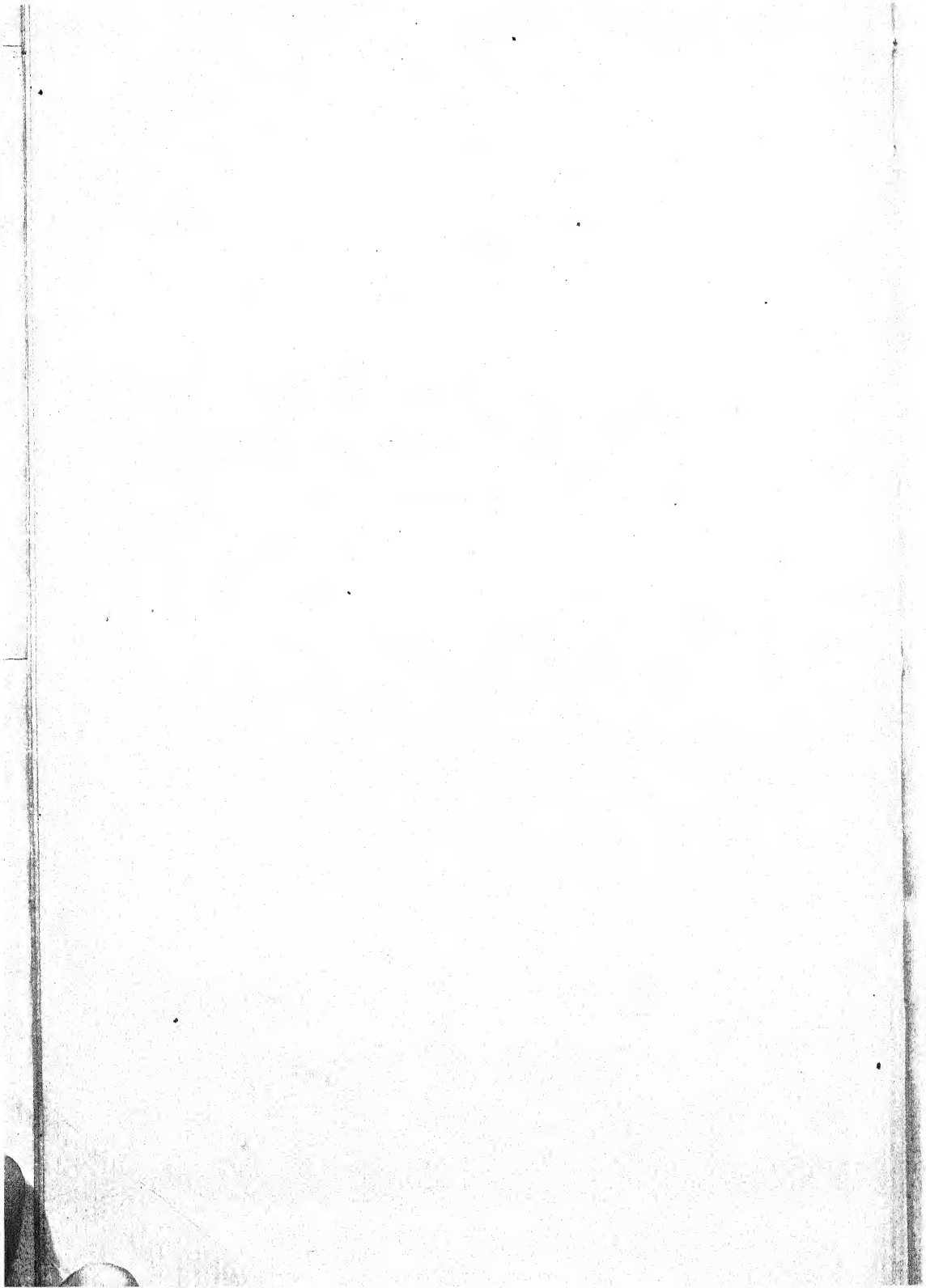
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# The Malayan Branch of the Royal Asiatic Society

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## Patron:

His Excellency the Right Honourable Malcolm MacDonald, P.C.,  
Governor-General, Malaya.

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## Council for 1948

Dato R. St. J. Braddell, <i>S.P.M.J.</i> , M.A.,	..	President
The Hon'ble Dato Nik Ahmad Kamil, D.K., <i>S.P.M.K.</i>	..	Vice-Presidents
Mr. Anker Rentse .. .. .	..	
Mr. J. N. McHugh, .. .. .	..	
Mr. Brian Harrison, M.A. .. .. .	..	
The Hon'ble Mr. H. G. Keith, B.Sc	..	
Mr. M. C. ff. Sheppard, <i>M.B.E.</i> , <i>M.C.S.</i>	..	
Mr. G. L. Peet .. .. .	..	Councillors
Mr. R. E. Holttum, M.A. .. .. .	..	
Mr. Hsu Yun-tsiao .. .. .	..	
The Hon'ble Mr. Justice E. N. Taylor	..	
Mr. B. A. Mallal .. .. .	..	
Mr. M. W. F. Tweedie, M.A. .. ..	..	Hon. Secretary and Hon. Treasurer
Mrs. G. J. Scott .. .. .	..	Asst. Hon. Secretary

[Mr. C. A. Gibson-Hill acting January-March  
in place of Mr. Tweedie (on leave).]

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Hon. Editor: Mr. C. A. Gibson-Hill, M.A.

**Proceedings  
of the  
Annual General Meeting**

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The Annual General Meeting of the Society was held at the Raffles Museum, Singapore, beginning at 5.00 p.m., on February 27th, 1948. It was preceded by a meeting of the Council.

Dr. W. Linehan, C.M.G., D.Litt., M.C.S. (retiring President) was in the chair. Sixteen other members of the Society were present.

1. The Minutes of the last Annual General Meeting (26:9:47) were read and confirmed.
2. The Officers and Council for 1948 were elected, and a vote of thanks was accorded to the retiring Council.
3. The Annual Report and Statement of Accounts for 1947 were adopted.
4. It was agreed that in future the title page of the Society's Journals should carry a short summary, in brackets, of the areas covered by the Society.
5. The Meeting approved the recommendation of the Council that the annual subscription for ordinary members be increased to \$10, and the sum due for life membership to \$150 for newly elected members, and \$75, or \$150 less the amount already paid in subscriptions, whichever is the greater, for ordinary members. The revised subscriptions will become effective, following confirmation at a subsequent general meeting, from January 1st, 1949.
6. On a recommendation from the Council the Meeting unanimously elected the Rev. Father R. Cardon and Dr. W. Linehan, C.M.G., D.Litt., M.C.S., Honorary Members of the Society, in recognition of their services to scholarship in Malaya.
7. The Meeting further approved the recommendation of the Council that a member of the Society be formally appointed to edit the Society's publications, and that his name appear together with that of the Council on each issue. It was agreed that this position should be held by Mr. C. A. Gibson-Hill.
8. The Meeting approved the printing programme for 1948 (as outlined in the editorial on the following page), and the provisional programme for 1949.

C. A. GIBSON-HILL,  
Ag Hon. Secretary.



## Editorial

The attention of readers of this Journal is drawn to the final paragraphs of the Annual Report for 1947, outlining the Society's financial position at the end of last year, and the prospects for 1948. In spite of the generous contributions from the Governments of the Malayan Union and Singapore, the Society's income has not risen sufficiently far above its pre-war figure to off-set the considerable increase in printing costs, which are still about three times greater than they were in 1941. As a result this issue is smaller than either of the two parts of Vol. 20, published last year.

The next Journal (Vol. 21, pt 2) will consist of two papers by the Hon. Mr. Justice E. N. Taylor on aspects of Customary Inheritance in Negri Sembilan, and Mohammedan Divorce in Penang and Singapore. We hope to distribute at the same time a third part for this year, consisting of an index to Volumes 1-20, compiled by the Honorary Editor.

The third part of Dato Roland Braddell's *Notes on Ancient Times in Malaya*, containing sections 4 et seq., will appear in the first issue for 1949 (Vol. 22, pt 1). We are unfortunately not able to print it sooner owing to our inability to obtain type bearing the necessary diacritical marks locally. We hope that this issue will also contain, among other papers, items on *A Panji Tale from Kelantan* by Sir Richard Winstedt, *A Malay Dictionary of 1631* by Dr. W. Linehan, *The Applicability of Modern Chinese Laws in the Straits Settlements* by J. V. Mills, *A Short History of Trengganu* by M.C.F. Sheppard, M.B.E., *The Early History of Christmas Island (Indian Ocean)*, with a bibliography, by C. A. Gibson-Hill, and several papers on interesting *keris* by Che' Abu Bakar bin Pawanchee.

The Rules of the Society have been omitted from this issue, as they appeared in Vol. 20, pt 2, instead of Vol. 20, pt 1. They will be published again, following the normal procedure, in the first part of Vol. 22 (1949). Copies can always be obtained on application to the Hon. Secretary or the Society's Clerk, at the Raffles Museum.

### Notice to Contributors

In the interests of economy contributors are asked to keep their papers as brief as possible, to avoid the use of foot-notes, and to correct and return their proofs with the minimum delay. Contributions should be type-written, on one side of the paper, double-spaced and with good margins. Line drawings should be in Indian ink, on white paper or Bristol board, and large enough and bold enough to allow of reduction.

Contributors are supplied with twenty-five reprints of their papers, free, shortly after the publication of the Journal (Rule 20). Additional copies can be provided on payment, if these are asked for when the paper is submitted, or when the galley proofs are returned to the Hon. Editor.

# ANNUAL REPORT

## of the

### Malayan Branch, Royal Asiatic Society

#### for 1947.

**Membership.** The number of members for the year 1947 was 407, compared with 258 at the end of 1946, and 508 at the end of 1941. The total of 407 was composed of 131 members who joined the Society after the close of hostilities, and 276 pre-war members who have remained on the active list: nearly half the latter are life members. Only a small proportion of the members who have disappeared from the Society's books since 1941 died during the war, and it must be taken that about 150 have not renewed their subscriptions for financial reasons, or because they have not returned to this country. Two, and in some cases three, reminders were sent to each pre-war member during the course of the year. A further card, announcing the publication of the two Journals for 1947, was sent in January, 1948.

The roll for the end of 1947 consisted of 12 Honorary Members, 3 Corresponding Members, and 392 Ordinary Members. 129 of the latter are Life Members. Two prominent members of the Society, the Rev. Dr. W. G. Shellabear and Mr. C. G. Woolley, died during the year. Dr. Shellabear was President of the Society from 1914-1918, and was elected an Honorary Member in 1921. Mr. Woolley had contributed a number of papers to the Society's Journal, and the last issue, Vol. 20, pt 2, contained three papers by him, written shortly before his death.

The following 100 memberships date from 1947:—

Abdul Aziz bin Zakaria.	Corry, W. C. S., M.C.S.
Abdul Latiph bin Haji Abdul Majid, Haji.	Cowan, C. D., M.A.
Abdul Rahman bin Abdul Aziz, M.B.E., J.P.	Cubitt, T. W.
Abdul Wahab Rashid.	Currid, Dr. P. G.
Ahmad bin Mohammed Ibrahim.	Dodsworth, Mrs M.
Allen, E. F.	Drake, A. J.
Allen, J. A. G.	Eber, J. F. St J.
Angus, M., M.C.S.	Edye, I. M., M.C.S.
Asst. Dir. of Education (Malay), F.M.	Eklund, The Revd Abel.
Bainbridge, R. C.	Elbury, E. T. F.
Banks, E.	Engelmann, K.
Baughman, The Revd B. H.	Evans, P. R. J.
Bennett, W/Commander J. A.	Falquier, G. A.
Biles, H. F.	Firth, Prof. Raymond.
Broome, R. N., M.C., M.C.S.	Fitch, F. H.
Burton, W., M.A.	Gabb, F.
Butterfield, B. C.	Ghani, Hashim.
Coates, P. A., M.C.S.	Girdler, A. H., O.B.E., M.C.S.
Collings, H. D., M.A.	Godesen, A. E. W.
Colton, A. G., M.C.S.	Goh Keng Swee.
Corbet, Dr A. S.	Gullick, J. M., M.C.S.

- |                                           |                                         |
|-------------------------------------------|-----------------------------------------|
| Heal, Mrs W. E.                           | Morrell, R.                             |
| Henderson, J. A.                          | Noone, R. O. D., F.R.A.I.               |
| Henry, J. S.                              | Oppenheim, Prof. A.                     |
| Hertfield, S. J.                          | Panglima Bukit Gantang, Dato.           |
| Hess, P. O.                               | Pereira, W. G.                          |
| Hoey, Major Robert. (U.S.A.)              | Raja Ayoub bin Raja Haji Bot, M.C.S.    |
| Hunt, Mrs W. E.                           | Rea, Miss C. L.                         |
| Hussain Baba.                             | Rego, Prof. A. Da Silva.                |
| Indra Petra.                              | Rentse, Miss Birtne.                    |
| Institute of Social Anthropology, Oxford. | Robertson, Mrs D. S.                    |
| Jack, Dr H. W., O.B.E.                    | Salt, H.                                |
| Jakeman, R. W., M.C.S.                    | Sammy, P.                               |
| Jennings, E. L. S.                        | Schofield, M.                           |
| Jessamine, J. E. B.                       | Scott, Mrs G. J.                        |
| Kemp, A. S. H., M.C.S.                    | Shahmaruddin bin Haji Abdulraman, Dato. |
| Kesteven, G. L.                           | Shaw, H., M.C.S.                        |
| Kuppusamy, V. D., F.R.G.S., F.R.S.A.      | Sidney, R.                              |
| Lim Bee Pin.                              | Silcock, Prof. T. H.                    |
| Lim Kean Chye.                            | Singaram, K.                            |
| Lim, Richard K. C.                        | Skeldon, J.                             |
| Lim, S. K.                                | Sundram, S. S.                          |
| Lock, M.                                  | Syed Idrus.                             |
| Macdonell, H.                             | Texeira, The Revd Father M.             |
| Mahmud bin Mat, C.B.E.                    | Thom, R. C.                             |
| McGraw, E.                                | Thomas, N. E.                           |
| Meissonier, The Revd Father Ph.           | Tratman, Prof. E. K.                    |
| Mitchell, W. S.                           | Vaughan, R. F.                          |
| Mohamed Kassim bin Dato Nika              | Walker, G. S., M.C.S.                   |
| Haji Abdul Rashid, Dato.                  | Williams, E. C.                         |
| Morley, J. A. E., M.C.S.                  |                                         |

**Annual General Meeting.** The Annual General Meeting was held at the Raffles Museum on Friday, 26 September. The president, Dr. Linehan, was in the chair. There were sixteen other members and one guest present. Dr. Linehan informed the meeting that he proposed to table a motion for the next General Meeting raising the subscription to \$10, and the sum required for a Life Membership to \$150.

**Journals.** Two Journals were published during the year, dated June and December. They were both of a miscellaneous character, and in all included 36 papers by 23 different authors. A number of these papers had been written before the outbreak of the Japanese war. The Society also issued the title-pages and lists of contents for Volumes 18 (1940), 19 (1941) and 20 (1947), which were distributed with the second part for the year.

**Finance.** Subscriptions for the year amounted to \$1,340. During this period the Society received a contribution of \$4,500 from the Government of the Malayan Union (\$1,500 for 1946, and \$3,000 for 1947), and \$350 from the Government of Singapore. Printing, blocks and separates for Volume 20, pt 1, cost the Society \$4,825, and for Volume 20, pt 2, \$4,656.83; the title-pages and lists of contents for Volumes 18-20 came to \$173.50, making a total expenditure on publications of \$9,655.33.

The bank balance at the close of 1946 was \$2,624.42, and the petty cash in hand \$31.35. At the close of 1947 the effective balance was \$572.72, and the petty cash in hand \$26.26. This shows a reduction of approximately \$2,050 in the Society's credit balance. In actual fact the position is even more serious, in that some \$2,500 of the Society's income during the year will not be repeated in 1948. This is made up of \$1,500 given by the Government of the Malayan Union for 1946 (in addition to their recurring contribution of \$3,000 for 1947), and \$1,000 of the \$1,995.45 received from the sale of back numbers of Journals. Only \$300 — \$400 of the expenditure can be regarded as non-recurrent. Against this, the Government of the Colony of Singapore has agreed to increase its contribution for 1948 from \$350 for 1947 to \$700, and the Governments of Sarawak and Brunei are contemplating making contributions of \$150 and \$80 respectively. In effect it would seem that the Society will have approximately \$6,400 to spend on publications (against the \$9,655.33 spent in 1947), if it is not to reduce its credit balance still further. This would suggest that the year's Journals should total about two-thirds of the size of those issued in 1947.

The figure of \$6,400 given above is arrived at as follows,

*Expected Income*

Subscriptions & Life Memberships	..	\$ 2,000
Sale of Journals	.. .. .	\$ 900
Contributions, Federation of Malaya	..	3,000
Singapore	.. ..	700
Sarawak	.. ..	150
Brunei	.. ..	80
Interest on Investments	.. .. .	835
		<u>\$ 7,665</u>

*Expected Expenditure (Excluding Publishing)*

Salary for the Society's Clerk	.. ..	\$ 900
Postage, Sundries, Bank Commission, etc.		\$ 325
		<u>\$ 1,225</u>
Balance likely to be available for printing		<u>\$ 6,400</u>

C. A. GIBSON-HILL,  
Ag Hon. Secretary.

# MALAYAN BRANCH, ROYAL ASIATIC SOCIETY.

## Receipts and Payments for the year 1947.

RECEIPTS.		PAYMENTS.	
<b>Publications:—</b>		<b>Publications:—</b>	
Balance at Mercantile Bank at 31st December 1946	.. \$2,624.42	Printing and paper Vol. 20 pt. 1	.. \$4,198.50
Petty Cash in hand	..	Blocks Vol. 20 pt. 1	.. 251.50
at 31st December 1946	.. 31.35	Separates Vol. 20 pt. 1	.. 375.00
	\$2,655.77	Refund for map to Mr. A Rentsch.	50.00
<b>criptions:—</b>			\$4,875.00
For the year 1941	.. \$ 6.00	Printing Vol. 20 pt. 2	.. \$3,838.75
For the year 1946	.. 168.00	Blocks Vol. 20 pt. 2	.. 408.08
For the year 1947	.. 666.00	Separates Vol. 20 pt. 2	.. 410.00
For the year 1948	.. 68.00		
For the year 1949	.. 12.00	Titles pages	..
For the year 1950	.. 6.00		
For the year 1951	.. 6.00	<b>Miscellaneous:—</b>	\$4,656.83
		Salary of the Society's Clerk	173.50
<b>Memberships:—</b>	\$ 932.00	Locksmith	700.00
	408.00	Retyping of Sir Richard Winstedt's MS.	50.00
	1,995.45	Purchase second-hand typewriter	50.00
<b>of Journals:—</b>		Postage	240.00
<b>ributions:—</b>		Posting Certificates	\$ 167.62
Government of Malayan Union	.. \$4,500.00	Stationery	4.23
Government of Singapore	.. 350.00	Cheque-books	68.20
		Sundries	2.00
		Bank Commission	84.88
			7.23
	4,850.00	Effective balance at Mercantile Bank	\$ 334.16
		at 31st December 1947	\$ 572.72
<b>est from Investments:—</b>	837.25	Cash in hand at 31st December 1947	26.26
			\$ 598.98
	\$11,678.47		\$11,678.47

C. A. GIBSON-HILL

Ag. Hon. Treasurer

Malayan Branch Royal Asiatic Society.

## List of Members for 1947.

*As far as possible this list has been corrected up to 1 March, 1948. A space has been left where the present address of a member is not known. The Hon. Editor would be grateful for any information leading to the completion of this list, or the elimination of errors.*

*The names of life members are marked with an asterisk, and the date of their election.*

### Patron.

His Excellency the Right Honourable Malcolm MacDonald, P.C.,  
Governor-General of Malaya.

### Honorary Members.

Year of  
Election.

- 1890. \*1918 Blagden, Dr. C. O., 40 Wychwood Avenue, Whitchurch Lane, Edgware, Middlesex, U.K.
- 1935. Bosch, Dr. F. D. K., Rubenslaan 54, Bilthoven, Holland.
- 1935. Coedès, Prof. Dr. George, Directeur de l'Ecole Francaise d'Extreme-Orient, Hanoi, Indo-China.
- 1930. \*1934 Crosby, Sir Josiah, K.B.E., C.I.E., c/o Shanghai Banking Corporation, 9 Gracechurch Street, London E.C. 3.
- 1922. Johore, H.H. The Sultan of, D.K., C.M.G., K.B.E., Johore Bahru, Johore, F.M.
- 1900. \*1932 Kloss, C. Boden, c/o Royal Societies Club, 63 St. James' Street, London, S.W. 1. (Council: 1904-08, 1923, 1927-28; Vice-Pres., 1920-21, 1927; Hon. Sec. 1923-26; Pres., 1930).
- 1903. \*1927 Maxwell, Sir W. G., K.B.E., C.M.G., Chindles, High Salvington, Worthing, Sussex, U.K. (Council: 1905, 1915; Vice-Pres., 1911-12, 1916, 1918, 1920; Pres., 1919, 1922-23, 1925-26).
- 1940. Perak, H.H. The Sultan of, K.C.M.G., K.B.E., The Istana Negara, Bukit Chandan, Kuala Kangsar, Perak, F.M.
- 1890. \*1912 Ridley, H.N., C.M.G., F.R.S., 7 Cumberland Road, Kew Gardens, Surrey, U.K. (Council: 1890-94, 1896-1911; Hon. Sec., 1890-93, 1896-1911).
- 1916. Sarawak, H.H. The Rajah of, G.C.M.G.
- 1921. Van Ronkel, Dr. P. H. Zoeterwoudsche Singel 41, Leiden, Holland.
- 1904. \*1935 Winstedt, Sir Richard, K.B.E., C.M.G., D.Litt., F.B.A., 10 Ross Court, Putney Heath, S.W. 15, U.K. (Vice-Pres.: 1914-15, 1920-21, 1923-25, 1928, Pres.: 1927, 1929, 1933-35).

### Corresponding Members.

- 1935. Hamilton, A. W., c/o Union Bank, Perth, West Australia.
- 1920. Laidlaw, Dr. F. F., M.A., Eastfield, Uffculme, Devon, U.K.
- 1920. Merril, Dr. E. D., Gray Herbarium, Cambridge, Mass., U.S.A.

### Ordinary Members.

1940. Abbas bin Haji Ali, c/o Malay College, Kuala Kangsar, Perak, F.M.
- \*1921. Abdul Aziz, the Hon Engku Y. M., D.K., C.M.G., Johore Bahru, Johore, F.M. (Vice-Pres.: 1933-34, 1935, 1941-42, 1946-47).
1947. Abdul Aziz bin Zakaria, Raffles College Hostel, Raffles College, Singapore.
1947. Abdul Latiph bin Haji Abdul Majid, Haji. Jalan Penghalan Chepa, Kota Bharu, Kelantan, F.M.
1926. Abdul Malek bin Mohamed Yusuf, M.C.S., The Hon., Mentri Besar, Seremban, Negri Sembilan, F.M.
1947. Abdul Rahman bin Abdul Aziz, M.B.E., J.P., 48 Hindoo Road, Singapore.
- 1933, \*1947. Abdul Rahman bin Mat, c/o District Office Kuala Lipis, Pahang, F.M.
- \*1926. Abdul Rahman bin Yassin, The Hon. Dato, 3 Jalan Chat, Johore Bahru, Johore, F.M.
1947. Abdul Wahab bin Abdul Aziz, The Hon. Haji, Dato Panglima Bukit Gantang, Mentri Besar, Ipoh, Perak, F.M.
1947. Abdul Wahab Rashid, 17 Bussorah Street, Singapore.
1946. Abdullah bin Ibrahim, M.C.S., Assistant District Officer, Tanjong Malim, Perak, F.M.
1936. Abdullah bin Muhammad Ali, Supreme Court, Raub, Pahang, F.M.
1946. Abu Bakar bin Pawanchee, Raffles Museum, Singapore.
- \*1909. Adams, Sir T. S., C.M.G., c/o United Universities Club, Suffolk Street, London U.K.
- \*1919. Adelborg, F., 40 Artillengatan, Stockholm, Sweden.
1935. Ahmad bin Haji Tahir, Asst. Comm. Police, Batu Pahat, Johore, F.M.
1947. Ahmad bin Mohamed Ibrahim, 20 Malacca Street, Singapore.
1926. Ahmad bin Osman, M.C.S., State Secretary, Secretariat, Ipoh, Perak, F.M.
1939. Akers, R. L. Irrigation Department, Seremban, Negri Sembilan, F.M.
1947. Allen, E. F. Department of Agriculture, Teluk Anson, Perak, F.M.
1947. Allen, J. A. G., Selbourne Estate, Padang Tungku, Pahang, F.M.
1936. Anderson, W. Graeme, Kota Bharu, Kelantan, F.M.
1938. Anderson School, Ipoh, Perak, F.M.
1947. Angus, M., M.C.S., District Office, Kuala Pilah, Negri Sembilan, F.M.
1934. Archer, The Revd. R. L., Ph.D., Methodist Mission, Singapore.
1946. Archey, Dr. G., Auckland Institute and Museum, P.O. Box 27, Newmarket, Auckland, New Zealand.
1926. Ariff, Dr. K. M., 12 Beach Street, Penang, F.M.
- \*1908. Ayre, C. F. C., c/o Lloyds Bank, 6 Pall Mall, London S.W. 1, U.K. (Hon. Treas., 1910-11).
1938. Azman bin Abdul Hamid, Magistrate's Court, Batu Pahat, Johore, F.M.
- \*1926. Bagnall, Sir John, K.B.E.



- \*1919. Bailey, A. E., "Keecha", Park Road, Leamington Spa, U.K.  
 \*1926. Bailey, John, C.M.G., 197 Latymer Court, W 6, U.K.  
 1926. Bain, V. L., Forest Office, Ipoh, Perak, F.M.  
 1947. Bainbridge, R. C., Mansfield & Co. Ltd., Singapore.  
 \*1912. Baker, Capt. A. C., M.C., (Council: 1928; Vice-Pres: 1931).  
 1935. Bangs, T. W. T., Kuala Pergau Estate, Ulu Kelantan, Kelantan, F.M.  
 1947. Banks, E., Fisheries Adviser, Kuching, Sarawak.  
 \*1899. Banks, J. E., Ambridge, Penn., U.S.A.  
 1932. Barrett, E. C. G., M.C.S., c/o M.E.O., Kuala Lumpur, Selangor, F.M.  
 1937. Barton, J. E., c/o The Shell Co., Shell House, Singapore.  
 1947. Baughman, The Revd. B. H., Methodist Mission, Singapore  
 1925. Bee, R. J., Public Works Dept., Teluk Anson, Perak, F.M.  
 1947. Bennett, W/Commander J. A., Officers Mess, R.A.F. Post Office, Seletar, Singapore.  
 \*1910. Berkeley, Capt. H., I.S.O., Clink Gate Farm, Droitwich, U.K.  
 \*1912. Bicknell, J. W., Bykenhulle, Hopewell Junction, Dutchess County, New York, U.S.A.  
 1947. Biles, H. F., Welfare Department, Kuantan, Pahang, F.M.  
 1931. Birse, The Hon'ble Mr A. L., M.C.S., British Adviser, Selangor, F.M.  
 \*1908. Bishop, Major C. F.,  
 \*1923. Black, the Hon. Mr J. G., M.C.S., The Residency, Kuala Trengganu, Trengganu, F.M.  
 1921. \*1947. Blasdell, The Revd. R. A., Methodist Mission, Malacca, F.M.  
 1925. Blythe, The Hon. Mr W. L., M.C.S., Chinese Secretariat, Kuala Lumpur, F.M.  
 \*1926. Boswell, A. B. S., Forest Dept., Taiping, Perak, F.M.  
 \*1919. Bourne, F. G., "Little Dawbourne", St. Michaels, Tenterden, Kent, U.K.  
 1921. Boyd, R., C.M.G., M.C.S., Co-operative Dept., Kuala Lumpur, Selangor, F.M.  
 \*1919. Boyd, W. R., Aram, Hollywood, Co. Down, U.K.  
 1946. Boyd-Walker, J. W., M.C.S.,  
 1913. \*1937. Braddell, Dato R. St J., S.P.M.J., M.A., Braddell Bros., P.O. Box 1001, Singapore. (Council: 1936-37; Vice-Pres. 1938-42, 1946-47).  
 1936. Braine, Dr. G. I. H., Chief Medical Officer, Kota Bahru, Kelantan, F.M.  
 1947. Broome, R. N., M.C., M.C.S., Secretariat, Seremban, Negri Sembilan, F.M.  
 \*1913. Bryan, J. M., Borneo Co. Ltd., 28 Fenchurch Street, London, U.K.  
 1932. Bryson, H. P., M.C.S.  
 \*1926. Burton, W., 1 Court Lane Gardens, Dulwich, U.K.  
 1947. Burton, W., M.A., Government English School, Batu Pahat, Johore, F.M.  
 1947. Butterfield, B. C., Abaco (Selangor) Rubber Limited, Abaco Estate, Semenyih, Selangor, F.M.



- \*1921. Butterfield, H M , Kedah Peak, Excelsior Road, Parkstone, Dorset, U.K.
- \*1913 Caldecott, Sir A , K C.M.G. , C B.E , Pier Point, Itchenor, Chichester, U K (Vice-Pres: 1931-32, 1934-35).
1926. Cardon, The Revd Father R., Bishop's House, 31 Victoria Street, Singapore. (Council: 1934-37, 1946-47; Vice-Pres. 1938-42).
1925. \*1937 Carey, H R , c/o Malay College, Kuala Kangsar, Perak, F M.
- \*1921. Cavendish, A., 3 Cecil Court, Hollywood Road, London, S.W.10, U.K.
1946. Chan Peng Yin, 18-F Battery Road, P.O. Box 533, Singapore
- \*1924. Cheesman, The Hon. Mr. H. R., C.M.G., Director of Education, Kuala Lumpur, F M.
- \*1913. Choo Kia Peng, C B.E., Ampang Road, Kuala Lumpur, F M.
- \*1926. Clarke, G. C , The Asiatic Petroleum Co. Ltd., St Helen's Court, Great St Helen's, London, E C 3, U.K.
- \*1911. Clayton, T. W.,
1947. Coates, P. A , M.C.S., Financial Secretary's Office, Federal Secretariat, Kuala Lumpur, Selangor, F M.
- \*1920. Collenette, C. L., 107 Church Road, Richmond, U.K. (Council: 1922).
1947. Collings, H. D., M.A , Raffles Museum, Singapore.
1947. Colton, A. G., M.C.S , c/o Chartered Bank, Singapore.
1926. \*1941 Coope, A. E., M.C.S., 219 Percy Road, Whitton, Twickenham, Middlesex, U K.
1936. Cooper, E. C., Guthrie & Co. Ltd., Singapore.
1947. Corbet, Dr. A. S , British Museum (Natural History), Cromwell Road, London, S.W.7. U.K.
1947. Corry, W. C. S , M.C.S , Malayan Establishment Office, Kuala Lumpur, Selangor, F M.
- \*1923. Cowgill, J. V., 21 Brunswick Drive, Harrogate, Yorkshire, U K.
1947. Cowan, C. D , M A , Raffles College, Singapore.
1947. Cubitt, T. W., Drainage & Irrigation Dept , Kuala Lumpur, Selangor, F.M.
- \*1921. Cullen, W. G , Bartolome Mitre 559, Buenos Aires, South America.
1947. Currid, Dr. P. G., State Medical & Health Officer, Raub, Penang, F M.
1923. Curtis, the Hon. Mr R. J. F , M.C.S , British Adviser, Kota Bahru, Kelantan, F M.
- \*1910. Daly, M.D., Cleve Hill, Cork, Irish Free State.
- \*1927. Dawson, C. W , C.M.G., M.C.S , Chief Secretary, Sarawak.
1923. Day, The Hon. Mr. E. V. G , M.C.S , The Residency, Alor Star, Kedah, F.M.
- \*1926. Del Tufo, M. V , M.C.S , Secretariat. Kuala Lumpur, F M.
1922. Denny, A , Sungei Pelek Estate, Sepang, Selangor, F M.
1930. De Vos, A E E , 323 Tulai Road, Taiping, Perak, F M.
- \*1921. Dickson, The Rev. P. L., The Chantry, Tuxford, near Newark, Nottinghamshire, U.K.

- 1947. Dodsworth, Mrs M., 5 Fort Canning Road, Methodist Mission, Singapore.
- \*1926. Dolman, H. C., Forest Office, Kuala Lipis, Pahang, F.M.
- 1936. Doscas, A. E. Colman, Department of Agriculture, Johore Bahru, Johore, F.M.
- 1936. Douglas, Dato F. W., Kampong Jawa, Klang, Selangor, F.M.
- 1947. Drake, A. J., c/o Presgrave & Mathews, Penang, F.M.
- \*1915. Dussek, O. T., c/o Malaya House, Trafalgar Square, London, S.W.1. (Vice-Pres.: 1935).
- 1931. Earle, L. R. F., Governor-General's Office, Cathay Buiding, Singapore.
- 1946. Easaw, Dr. T. C., Health Office, Johore Bahru, Johore, F.M.
- \*1922. Ebden, W. S., M.C.S., c/o Malaya House, Trafalgar Square, London, S.W.1.
- 1947. Eber, J. F. St J., c/o Eber & Koek, 4a Raffles Place, Singapore.
- 1922. Eckhardt, H. C., Kuala Kangsar, Perak, F.M.
- 1922. \*1947. Edgar, A. T., M.B.E., c/o S. B. Palmer, Anglo-Oriental Building, Kuala Lumpur, F.M.
- \*1927. Education Department, Alor Star, Kedah, F.M.
- 1947. Education (Malay). Ass. Director of., Dept. of Education, Kuala Lumpur, Selangor, F.M.
- \*1947. Edye, I. M., M.C.S., The Residency, Kuala Trengganu, Trengganu, F.M.
- 1947. Eklund, the Revd Abel, 1 Wesley Road, Kuala Lumpur, F.M.
- 1947. Elbury, F. T. G., P.W.D., Singapore.
- 1929. \*1939 Elder, Dr. E. A., British Dispensary, Singapore.
- 1946. Eldridge, C. H., Hongkong Shanghai Bank, Kuala Lumpur, F.M.
- 1947. Engelmann, K., Malayan Wire Mesh & Fencing Co. Ltd, Mercantile Building, Singapore.
- 1932. English School Union, The. Muar Johore, F.M.
- 1924. \*1940 Evans, I. H. N., District Office, Kota Belud, *via* Jesselton, British North Borneo. (Vice-Pres.: 1926-30).
- 1947. Evans, P. R. J., Harrison & Crosfield (M) Ltd., Kuala Lumpur, Selangor, F.M.
- 1919. Fairmaid, G. H., Pahang Consolidated Co. Ltd., Sungei Lembing, Pahang, F.M.
- 1947. Falquier, G. A., Swiss Consulate, Singapore.
- 1909. Farrer, R. J., C.M.G., St John's Island, Singapore. (Council: 1925-27).
- 1946. Federation of Malaya, Secretariat Library of the, Kuala Lumpur, F.M.
- \*1911. Ferguson-Davie, The Revd. C. J., Fort Hare University, Alice, Cape Province, South Africa. (Council: 1912-13).
- 1937. Ferguson, D. S., Drainage & Irrigation Dept., Ipoh, Perak, F.M.
- 1946. Fiennes, David, Mansfield & Co. Ltd, Singapore.
- \*1919. Finnie, W., 73 Forest Road, Aberdeen, U.K.
- 1947. Firth, Prof. Raymond, London School of Economic & Political Science. Houghton Street, Aldwych W.C.1. U.K.

1947. Fitch, F. H., Kuantan, Pahang, F.M.
- \*1897. Flower, Major S. S., Old House, Park Road, Tring, Hertfordshire, U.K.
1928. Foenander, E. C., Forest Dept., Bentong, Pahang, F.M.
1923. Forest Botanist, Forest Research Institute, Dehra Dun. U.P., India.
1926. Forestry, Director of., Kepong, Selangor, F.M.
1946. Forsyth, C. R., M.C.S., Assistant Commissioner, Muar, Johore, F.M.
- \*1918. Foxworthy, Dr. F. W., Arlington Avenue, Bekerley, California, U.S.A., (Council: 1923, 1926-27).
1935. Francois, The Very Revd. Father J.P., Church of St Michael, Ipoh, Perak, F.M.
- \*1908. Freeman, D., 96 Priory Road, West Hampstead, London, N.W.6, U.K.
1947. Gabb, F., 28 Malcolm Road, Singapore. (or c/o Radio Malaya).
- \*1912. Gallagher, W. J., 72 Courtfield Gardens, London, S.W.5, U.K.
1931. Gardiner, E. A., State Engineer, P.W.D., Ipoh, Perak, F.M.
1920. Geale, Dr. W. J., Grove House, Clare, Sudbury, Suffolk, U.K.
- \*1926. George, J. R.
1947. Ghani, Hashim, 6th Police Court, Singapore.
1940. \*1947. Gibson-Hill, C. A., M.A., F.Z.S., Raffles Museum, Singapore, (Ag Hon. Sec. & Treas.: June-December, 1947).
1923. Gilmour, A., M.C.S., Secretary for Economy Affairs, Fullerton Building, Singapore.
1947. Girder, A. H., O.B.E., M.C.S., Kluang, Johore, F.M.
- \*1922. Glass, Dr. G. S., c/o Glyn Mills & Co., Whitehall, London, S.W.1, U.K.
1947. Godesen, A. E. W., The East Asiatic Company Ltd., P.O. Box 145, Penang, F.M.
1947. Goh Keng Swee, 15 Lincoln Road, Singapore.
1920. \*1940. Gordon-Hall, The Hon. Mr W. A., M.C.S., British Adviser, Seremban, Negri Sembilan, F.M.
1931. Gregory, C. P., Kerilla Estate, Kelantan, F.M.
1946. Grehan, D. W., M.A., B.A.I., (Dublin) A.M.I.C.E., Ex. Engr. P.W.D., Penang, F.M.
1947. Gullick, J. M., M.C.S., The Secretariat, Seremban, Negri Sembilan, F.M.
1946. Gunaratinam, Mrs. A., 449 Guillimard Road, Sian Lim Park, Singapore.
- \*1923. Hacker, Dr. H. P., Long Acre, Downe, Kent, U.K.
1924. Hamzah bin Abdullah, The Hon. Dato, Selangor Secretariat, Kuala Lumpur, Selangor, F.M.
1946. Han Wai Toon, 1003 Upper Thomson Road, Singapore.
1933. Hannay, H. C., Mercantile Bank Building, Ipoh, Perak, F.M.
1937. Harrison, B., M.A., Raffles College, Singapore. (Council: 1938-39; Hon. Treas.: 1941-42).
- \*1926. Hastings, W. G. W., 56 Klyne Street, Kuala Lumpur, F.M.

- \*1904. Haynes, A. S., C.M.G., Brooklands, 11 Warwick New Road, Leamington Spa, Warwickshire, U.K.
1936. Headly, D., M.C.S., District Officer, Kuala Selangor, Selangor, F.M.
1947. Heal, Mrs W. E., c/o M.E.O., Kuala Lumpur, F.M.
1947. Henderson, J. A., c/o P.W.D., Segamat, Johore, F.M.
1921. Hendersen, M. R., Botanic Gardens, Singapore. (Council: 1928; Hon. Treas.: 1928-34; Hon. Sec.: 1946).
1947. Henry, J. S., High School, Klang, Selangor, F.M.
1947. Hess, P. O., Food Control Dept., Kuala Trengganu, Trengganu, F.M.
- \*1923. Hicks, E. C., Education Office, Ipoh, Perak, F.M.
1939. Hill, A. H., Education Office, Trengganu, F.M.
- \*1923. Hodgson, D. H., Forest Dept., Seremban, Negri Sembilan, F.M.
1947. Hoey, Major Robert, American Consulate General, Union Building, Singapore.
1922. Holttum, R. E., M.A., Botanic Gardens, Singapore. (Council: 1933, 1935, 1940-42, 1946-47; Hon. Treas.: 1923-26, 1928; Vice-Pres. 1929, 1936-37).
1946. Hone, Sir Ralph, K.G., "Kashmir" 14 Dalvey Road, Singapore.
1933. Hooykaas, Prof. Dr. C., Wilhelminalaan 55, Batavia-C., Java.
1938. Hough, Prof. G. G., M.A., Raffles College, Singapore.
1940. \*1947 Hsu Yun-tsiao, Post Office Box 709, Singapore. (Council 1946-47).
1935. Humphrey, A. H. P., M.C.S.
1947. Hunt, Mrs W. E., "Moycraig", Penang Hill, Penang, F.M.
1947. Hussain Baba, Police Headquarters, Kangar, Perlis, F.M.
1934. Ibrahim School, Sungei Patani, Kedah, F.M.
- \*1926. Ince, H. M., Kencot Lodge, Nr. Lechlade, Gloucestershire, U.K.
1947. Indra Petra, Tengku.
1923. Idris bin Ibrahim, Dato Wan., Johore Bahru, Johore, F.M.
1947. Institute of Social Anthropology, 1 Jowett Walk, Oxford, U.K.
1926. Irving, Mrs G. C., 8 The Avenue, Beckenham, Kent, U.K.
1947. Jack, Dr H. W., O.B.E., 71 Holland Road, Singapore.
1939. Jackman, C.W., B.A., Education Department, Nairobi, Kenya.
1947. Jakeman, R. W., M.C.S., Colonial Secretariat, Singapore.
1946. Jamuh, George, Mukah, Sarawak.
1947. Jennings, E. L. S., Editor, *Singapore Free Press*, Cecil Street, Singapore.
- \*1921. Jermyn, L. A. S., 71 Carter Avenue, Exmouth, Devon, U.K.
1947. Jessamine, J. E. B., Batu Pahat Rubber Co. Ltd, Batu Pahat, Johore, F.M.
- \*1918. Jones, E. P.
- \*1913. Jones, S. W., C.M.G., M.C.S., 6 Boscombe Cliff Road, Bourne-mouth, U.K. (Council: 1935; Vice-Pres: 1937; Pres: 1939-42).
- \*1919. Jordan, The Revd. A. B., c/o M. I. A. London, U.K.
- \*1921. Kay-Mouat, Prof. J. R.
1926. Keith, The Hon. Mr H. G., Forest Dept., Sandakan, British North Borneo.

- \*1921. Kellie, J., Dunbar Estate, Neram Tunggal P.O., Chegar Perak, Pahang, F.M.
- 1947. Kemp, A. S. H., Segamat, Johore, F.M.
- \*1920. Ker, W. P. W., c/o Paterson Simons & Co. Ltd., London House, Crutched Friars, London, E.C.3, U.K.
- \*1920. Kerr, Dr. A., c/o Mrs Palliser, Street House, Hayes, Kent, U.K.
- 1947. Kesteven, G. L., 29 Fort Road, Katong Singapore. Adviser on Fisheries, Special Commissioner's Office.
- 1926. Khoo Sian Ewe, 380 Burmah Road, Penang, F.M.
- 1946. King George V School, Seremban, Negri Sembilan, F.M.
- 1947. Kuppusamy, V. D., F.R.G.S., F.R.S.A., Anglo-Chinese School, Kampar, Perak, F.M.
- \*1923. Lease, F. E., The Shanty, Chislehurst Hill, Chislehurst, Kent, U.K.
- \*1921. Lee, L. G., Ladang Geddes, Bahau, Negri Sembilan, F.M.
- \*1922. Leggate, J., "Troggett's" Wallis Wood, Ockley, Surrey, U.K.
- \*1913. Leicester, Dr. W. S., Sungei Lembing, Pahang, F.M.
- 1938. le Mare, D. W., Director of Fisheries F.M., Penang, F.M.
- \*1925. Leonard, R. W. F., c/o Mansfield & Co. Ltd, Ocean Building, Singapore.
- 1941. \*1947. Lewis, G. E. D., Education Dept. F.M.
- 1938. Lewis, L. I., Education Office, Seremban, Negri Sembilan, F.M.
- 1922. Leyne, E. G., Sungei Purun Estate, Seminyih, Selangor, F.M.
- 1947. Lim Bee Pin, Government High School, Klang, Selangor, F.M.
- 1936. Lim, C. O., 33 China Street Gauth, Penang, F.M.
- 1947. Lim Kean Chye, 15 Chancery Lane, Singapore.
- 1947. Lim, Richard K. C., 55 & 57 Hill Street, Singapore.
- 1947. Lim, S. K., Ho Hong Building, 65 Chulia Street, Singapore.
- 1925. Linehan, The Hon. Dr. W., C.M.G., M.A., D.Litt., M.C.S., The Secretariat, Kuala Lumpur, Selangor, F.M. (Vice-Pres: 1933-35; Council: 1941-42; Pres: 1946-47).
- 1947. Lock, M., Kuala Sidim Estate, Kuala Ketil, Kedah, F.M.
- 1930. Luckham, H. A. L., M.C.S., D.O. Kinta, Batu Gajah, Perak, F.M.
- 1936. Lyle, C. W., M.C.S., Labour Department, Secretariat, Kuala Lumpur, F.M.
- \*1907. Lyons, Revd E. S., 1089, Wash, 35th Street, Los Angeles, California, U.S.A.
- \*1920. MacBryan, G. T. M., No. 1 Woodstock House, 11 High Street, Marylebone, London, U.K.
- \*1933. MacDonald, P. J. D., Laan Cornelius, 7 Batavia Centrum, Java, N.E.I.
- 1947. Macdonell, H., c/o Mercantile Bank, Singapore.
- \*1910. MacFadyen, E., c/o Sports Club, London, U.K.
- 1939. MacLean, Mrs D. L., c/o Chartered Bank, Kuala Lumpur, F.M.
- 1935. MacTier, R. S., c/o The Glen Line Ltd, 20 Billiter Street, London, E.C.3, U.K.
- 1929. Mace, N., Flat 7, 12 Marne Street, South Yarra S.E.1, Victoria, Australia.
- 1946. Madoc, G. C., c/o H. B. M. Ministry, Bangkok, Siam.

1947. Mahmud bin Mat, C.B.E., The Hon. Dato, Mentri Besar, Kuala Lipis, Pahang, F.M.
1932. Malacca Historical Society, Malacca, F.M.
1926. Malay College, Kuala Kangsar, Perak, F.M.
1935. Mallal, Bashir A., 20 Malacca Street, Singapore. (Council: 1946-47).
1946. Maniam, K. S., 79 Java Street, Kuala Lumpur, F.M.
1916. Mann, W. E., c/o Dr. A. C. Hartman, Anna's Hoeve, Ommen, Holland.
1934. Martin, J. M., 25 Pelham Place, London, S.W.7., U.K.
- \*1925. Martin, W. M. S.,
1946. Mathias, T. J., M.C.S., c/o Secretariat, Kuala Lumpur, F.M.
- \*1922. May, Percy W., 6 Queen Anne's Garden, Bedford Park, London, W.4, U.K.
1946. McDonald, E. M., Income Tax Office, Kuala Lumpur, Selangor, Selangor, F.M.
1947. McGraw, E., Methodist Mission, Sibul, Sarawak.
1939. McHugh, J. N., Public Relations Department, P. O. Box 1037, Kuala Lumpur, F.M.
1939. Mead, The Hon. Mr J. D., c/o Osborne & Chappel, Ipoh, Perak, F.M.
1927. Megat Yunus bin Megat Mohamed Isa, M.C.S., Kinta Land Office, Batu Gajah, Perak, F.M.
1947. Meissonier, Revd. Father Ph., 128 Rue du Bac, Paris 7. France.
1922. Merican, Mohamad Ismail., 29 Alor Muah, Alor Star, Kedah, F.M.
1941. Meyer, A. G., Serangoon English School, Simon Road, Paya Lebar, Singapore.
- \*1926. Miles, C. V., c/o Rodyk & Davidson, Singapore.
1925. Miller, G. S., 67 John Street, Helenburg, Dumbartonshire, U.K.
- \*1921. Miller, The Hon. Mr J. I., M.C.S., British Adviser, Ipoh, Perak, F.M.
1926. \*1947 Mills, J. V., Morshead Hotel, Richmond, Surrey, U.K. (Council: 1919-30, 1932-33, 1936, 1938; Pres.: 1937).
1933. Milne, Mrs C. E. L., Government English School, Muar, Johore, F.M.
1947. Mitchell, W. S., c/o Boots Pure Drug Co. (Far East) Ltd., P. O. Box 367, Singapore.
1936. Mohamed Jaffar bin Mantu., High School, Kajang, Selangor, F.M.
1947. Mohamed Kassim bin Dato Nika Haji Abdul Rashid, Dato Undang of Sungei Ujong, Seremban, Negri Sembilan, F.M.
1922. Mohamed Said, Major Dato Haji, D.A.M.J., P.I.S., Private Secretary to H.H. The Sultan of Johore, F.M.
1921. Mohamed Salleh bin Ali, Dato, Johore Bahru, Johore, F.M.
1921. Mohamed Sheriff bin Osman, The Hon. Haji, C.B.E., Alor Star, Kedah, F.M.
1946. Morell, Capt. D. H., Head Quarters, Northern Ireland District, Lisburn, Co. Antrim, U.K.
1946. Morgan, E. D., M.C.S., Secretariat, Kuala Lumpur, Selangor, F.M.
- \*1926. Morice, J., c/o Customs Office, Kuala Lumpur, F.M.
- \*1920. Morkill, A. G., c/o University China Committee, 16 Gordon Square, W.C.1.

1947. Morley, J. A. E., M.C.S., Colonial Secretary's Office, Singapore.
1947. Morrell, R., Raffles College, Singapore.
- \*1915. Mundell, H. D., c/o Sisson & Daly, Singapore. (Council: 1938).
1934. Mustapha bin Tengku Besar Burhanuddin, Tengku, c/o District Office, Raub, Pahang, F.M.
1947. Namazie, M. J., 20 Malacca Street, Singapore.
1946. National Library of Peiping, Peiping, China.
1946. Newbould, The Hon. Mr A. T., C.M.G., M.C., E.D., M.C.S., Chief Secretary, Government Federation of Malaya, Kuala Lumpur, Selangor, F.M.
1934. Nightingale, H. W., M.C.S., 194 Watten Estate, Singapore.
1933. Nik Ahmad Kamil bin Haji Nik Mahmud, The Hon. Mentri Besar, Kota Bahru, Kelantan, F.M.
1947. Noone, R. O. D., B.A., F.R.A.I., Botanical Hotel, Domain Road, South Yarra, Victoria, Australia.
1947. Oppenheim, Prof. A., 5 Raffles College, Singapore.
1936. Oppenheim, H. R., c/o Peet, Marwick, Mitchell & Co., Union Buildings, Singapore.
1925. Owen, A. I., c/o Chartered Bank, Seremban, Negri Sembilan, F.M.
1929. Pagden, H. T., Ag. Director of Museums, F.M., c/o Dept. Agriculture, P. O. Box 1004, Kuala Lumpur, F.M.
- \*1921. Paterson, Major, H. S., M.C.S.,
1937. Payne, Dr. C. H. Withers, Drew & Napier, P. O. Box 152, Singapore.
1937. Payne, E. M. F., M.A., B.Sc., King George V School, Seremban, Negri Sembilan, F.M.
1933. Pearson, C. D., c/o Survey Office, Batu Pahat, Johore, F.M.
1931. Peet, G. L., Editor, *The Straits Times*, Cecil Street, Singapore.
1926. Penang Library, Penang, F.M.
- \*1926. Pengilley, E. E., M.C.S., Secretariat, Kuala Lumpur, F.M.
- \*1925. Penrice, W., c/o Mansfield & Co. Ltd., Ocean Building, Singapore.
1947. Pereira, W. G., 56 Ceylon Lane, Kuala Lumpur, Selangor, F.M.
- \*1938. Persekutuan Guru-guru Melayu, Seremban, Negri Sembilan, F.M.
- \*1920. Peskett, A. D., c/o Barclay Bank, Weston-Super-Mare, Somerset, U.K.
1939. Pillay, Sandy G., Laidlaw Building, 2nd Floor, Singapore.
1937. Pooley, E. G., c/o Messrs. Presgrave & Matthews, Penang, F.M.
1928. Powell, J. B., 100 Westward Rise, Barry, Glamorgan, U.K.
1932. Pretty, E. E. F., M.C.S.,
1935. \*1947 Purcell, Dr. V. W. W. S., United Nations, Lake Success, New York, Zone c61, U.S.A.
1934. Raffles College, The Librarian, Singapore.
1939. Raghavan, N., Hermitage, Ormes Road, Kilpauk, Madras, India.
1947. Raja Ayoub bin Raja Haji Bot, M.C.S., Secretariat, Kuala Lumpur, F.M.
1929. Raja Razman bin Raja Abdul Hamid, Kuala Kangsar, Perak, F.M.
1937. Ramani, R. K., (Braddell & Ramani), Hongkong Bank Chambers, Kuala Lumpur, Selangor, F.M.
1932. \*1940 Rawlings, G. S., M.C.S. (on leave).
1947. Rea, Miss C. L., Methodist Girls' School, Kuantan, Pahang, F.M.

- \*1934. Reed, Dr. J. G., M.B.E., Sungkai, Perak, F.M.
- 1937. Regester, P. J. D., O.B.E., 6/8 Mountbatten Road, Kuala Lumpur, Selangor, F.M. (Council: 1946-47).
- 1947. Rego, Prof. A. Da Silva., Rua Ivens 34-40, Lisbon, Portugal.
- \*1910. Reid, Dr. Alfred, Batang Padang Estate, Tapah, F.M.
- 1930. Rentse, A., Kota Bahru, Kelantan, F.M. (Vice-Pres: 1941-42, 1946-47).
- 1947. Rentse, Miss Birthe, Women's College, Newton, Sydney, New South Wales, Australia.
- \*1921. Rex, Marcus, C.M.G.
- \*1926. Rigby, W. E., M.C., M.C.S., Secretariat, Kuala Lumpur, F.M.
- 1938. Robb, L. T. A., Telok Pelandok Estate, Coast Road, Port Dickson, Negri Sembilan, F.M.
- 1947. Robertson, Mrs. D. S., c/o Shell Company of S.S., Penang, F.M.
- 1926. \*1935 Robinson, P. M., Hongkong Shanghai Bank, 9 Gracechurch Street, London, E.C.3 U.K.
- 1936. Ross, A. N., M.C.S., District Officer, Kuala Krai, Kelantan, F.M.
- 1947. Salt, H., 18 Swettenham Road, Tanglin, Singapore.
- 1947. Sammy, P., 2 Raffles Place, Singapore.
- \*1923. Sanson, C. H., c/o Lloyds Bank Ltd, Section G3, Pall Mall, London, S.W.1., U.K.
- \*1919. Santry, D., Selamat, Hospital Road, Hill Crest, Natal.
- 1946. Savage, H. E. F., Geological Survey Dept., Kuala Lumpur, F.M.
- 1947. Schofield, M., 26 Swettenham Road, Singapore.
- 1935. Schweizer, H., c/o Diethelm & Co. Ltd., P. O. Box 191, Singapore. (Council: 1946-47).
- 1947. Scott, Mrs G. J., c/o P. O. Box 262, Kuala Lumpur, Selangor, F.M. (Asst. Hon. Sec: 1947).
- \*1920. Scott, Dr. W., Sungei Sipur, Perak, F.M.
- 1922. \*1939 Sehested, S., c/o Singapore Club, Singapore.
- \*1927. Sells, H. C., Satuan Burnham, Buckinghamshire, U.K.
- 1937. Sèri Maharaja, Tengku, Kota Bahru, Kelantan, F.M.
- 1946. Seth bin Mohamed Said, Johore Bahru, Johore, F.M.
- 1947. Shahmaruddin bin Haji Abdulrahman, Dato, Kuala Klawang, Jelebu, Negri Sembilan, F.M.
- 1947. Shaw, H. M.C.S., The Secretariat, Kuala Lumpur, F.M.
- 1929. Sheppard, M.C. ff., M.B.E., M.C.S., District Officer, Klang, Selangor, F.M.
- 1947. Sidney, R., 15 Perak Road, Kuala Lumpur, F.M.
- 1947. Silcock, Prof. T. H., 2 Raffles College, Singapore.
- \*1909. Sims, W. A., The Lodge, Gander Green Lane, Cheam, Surrey, U.K.
- 1931. Singam, S. Durai Raja., c/o Abdullah School, Kuantan, Pahang, F.M.
- 1947. Singaram, K., 121 Buffalo Road, Singapore.
- 1934. Sivapragasam, T., Co-operative Societies Dept, Kuala Lumpur, Selangor, F.M.
- 1937. Skeat, W. W., "Pixies Holt", Lyme Regis, Dorset, U.K.
- 1947. Skeldon, J., c/o Mansfield & Co. Ltd., Ocean Building, Singapore.
- \*1926. Sleep, The Hon. Mr A., M.C.S., The Residency, Johore Bahru, Johore, F.M.



1924. Smith, J. D. M., M.C.S., The Neuk, School Crescent, Peterculter, Aberdeenshire, U.K.
- \*1930. Soann, A. I. C., Tanah Intan Estate, Martapoera, S.E. Borneo.
1940. Somerville, D. A., M.C.S. Secretariat, Kuala Lumpur, F.M.
1928. \*1940 Stanton, W. A., Woodland Manor, R.F.D., No. 3, Rockville, Maryland, U.S.A.
1941. Stewart, Mrs. N. I., Kirby Estate, Labu, Negri Sembilan, F.M.
- \*1917. Stirling, W. G., c/o Cox & King, 10 Haymarket, London, S.W. 1, U.K. (Council: 1923-25, 1927-29).
- \*1939. Stubbs, G. C., c/o Survey Office, Kuala Lumpur, F.M.
1946. Stutchbury, A.D., M.C.S., Secretariat for Economic Affairs, Singapore.
1926. Sultan Idris Training College, Tanjong Malim, Perak, F.M.
1947. Sundram, S. S., Government High School, Klang, Selangor, F.M.
1947. Syed Idrus, Tengku Besar of Tampin, Tampin, Negri Sembilan, F.M.
- \*1918. Sykes, G.R., M.C.S.,
1908. Tan Cheng Lock, C.B.E., 96 First Cross Street, Malacca, F.M.
1913. Tayler, C. J., c/o Hongkong Shanghai Bank, Kuala Lumpur, F.M.
- \*1928. Taylor, The Hon. Mr Justice E. N., Judge's Chambers, Supreme Court, Seremban, Negri Sembilan, F.M.
1947. Texeira, The Revd Father M., Church of St. Joseph, Victoria Street, Singapore.
1941. Thambiah, S., Victoria Institution, Kuala Lumpur, Selangor, F.M.
1947. Thom, R. C., Malayan Police, Kota Bahru, Kelantan, F.M.
1938. Thomas, Francis, B.A., St. Andrew's School, Singapore.
- \*1921. Thomas, L. A., Chief Police Officer, Singapore.
1947. Thomas, N. E., Asst Controller of Telecommunications, Singapore.
1946. Thomson, G. G., Public Relations Officer, Secretariat, Singapore.
1947. Tratman, Prof. E. K., College of Medicine, Dental Surgery Dept., Singapore.
1946. Treeby, I. W. C., 88 Batu Ferringghi, Penang, F.M.
1930. Turner, H. G., M.C.S., Malayan Establishment Office, Kuala Lumpur, F.M.
1932. Tweedie, M. W. F., M.A., Raffles Museum, Singapore. (Hon. Treas.: 1936-40; Hon. Sec. & Treas.: 1946-47).
1930. University Library, Rangoon, Burma.
1936. University Library, Triplicane, Madras, India.
1947. Vaughan, R. F., Sandakan, British North Borneo.
1937. Wade, G. H., c/o Borneo Co., Ltd., Penang, F.M.
- \*1926. Waddell, Miss. M. C.,
1947. Walker, G. S., M.C.S., District Officer, Jelebu, Negri Sembilan, F.M.
- \*1926. Wallace, W. A., Tewantin, via Cooray, Queensland, Australia.
1946. White, F. T. M., Mines Department, Court Hill, Kuala Lumpur, Selangor, F.M.
1935. White, L. E., Tebing Tinggi Estate, Kusial, Kelantan, F.M.
1923. Whitfield, L. D., Sultan Idris Training College, Tanjong Malim, Perak, F.M.
- \*1926. Wilcoxson, W. J., Stratis Trading Co. Ltd., Singapore

- \*1926. Willan, The Hon. Sir H. C., K.B.E., Chief Justice, Kuala Lumpur, Selangor, F.M.
- \*1921. Willbourne, Dr. E. S., Batu Gajah, Perak, F.M.
- 1947. Williams, E. C., c/o Cold Storage Creameries Ltd., 186 Orchard Road, Singapore.
- 1921. \*1946 Williams, R. M., Economic Branch, Federal Secretariat, Kuala Lumpur, F.M.
- 1946. Williams-Hunt, Major P. D. R., F.S.A., F.R.A.I., F.R.G.S., c/o Mercantile Bank, Singapore.
- 1940. Windsor, Mrs Edna, Kuantan, Pahang, F.M. •
- \*1910. Winkelmann, H.
- 1937. \*1946 Winsley, Capt. T. M., c/o Barclays Bank, D. C. & O., Grahams-town, Cape Province. South Africa. (Hon. Treas: 1946).
- 1938. Wolters, O. W., M.C.S., Selangor State Labour Department, Kuala Lumpur, Selangor, F.M.
- \*1905. Worthington, A. F., Longclose, Pennington, Lymington, Hampshire, U.K.
- 1921. \*1936 Wurtzburg, C. E., c/o Glen Line, 20 Billiter Street, London, E.C.3, U.K. (Council: 1924-26, 1930; Hon. Sec: 1925; Vice-Pres: 1927, 1929, 1933-35; Pres: 1936).
- 1940. Yao, T. L., c/o Mr Hsu Yun Ts'iao, P. O. Box No. 709, Singapore.
- \*1923. Yates, H. S., 331 Jiannini Hall, Berkeley, California, U.S.A.
- \*1917. Yates, Major W. G.
- 1932. Yeh Hua Fen, The Revd, c/o Y.M.C.A., Hangkow, Chekiang, China.
- \*1920. Yewdall, Capt. J. C., "Seatoller", Meadway, Berkhamsted, Hertfordshire, U.K.
- \*1904. Young, H. S., Rosemount, Tain, Rosshire, U.K.
- 1920. Zainal-Abidin bin Ahmad, c/o School of Oriental & African Studies, Malet Street, London W.C.1, U.K.
- 1939. Zainal Abidin bin Kassahatan, c/o District Office, Kuala Kubu Bahru, Selangor, F.M.

**A MALAY LEGAL DIGEST**  
**COMPILED FOR**  
**'Abd al-Ghafur Muhaiyu'd-din Shah**  
**Sultan of Pahang 1592-1614 A.D.**  
**WITH UNDATED ADDITIONS**

*edited by*  
JOHN E. KEMPE & R. O. WINSTEDT.  
(Received December, 1947)

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**PREFACE**

The text of these laws is derived from

- (1) MS. A, Maxwell bequest MS. 17 in the Library of the Royal Asiatic Society, London,
- (2) MS. B, Maxwell bequest MS. 20 in the same Library.

MS. A was copied in 1296 A.H. = 1879 A.D. from a MS. belonging to Bendahara (afterwards) Sultan Idris ibni Raja Iskandar for Sir William Maxwell when he was Assistant Resident, Larut, Perak. The Sultan Idris MS. itself was a recent copy, made in 1234 A.H. (= 1819 A.D.) by Naina Ahmad, Lebai, bin Nakhoda Muhammad Husain; the copyist bore the title of Fakih Si-Raja Mantri, and was born in Malacca of a Pulicat family.

MS. B was copied in 1300 A.H. (1884 A.D.) for Mr. Leech, Clerk to the Resident of Perak, by Luakang bin Muhammad Rashid of Kampong Kota Lama from laws dated 1248 A.H. = 1832 A.D.), that belonged to the Dato' Sri Adika Raja.

The main differences between the two MSS. are given in Notes on the Text.

The first twenty-three sections, with their customary and Hindu colouring, are (§23) dated 25th September 1595 and were compiled during the reign of Sultan 'Abd al-Ghafur Muhaiyu'd-din Shah, who ruled Pahang from 1592 until 1614 A.D. They must go back to the early days of Islam in that State, seeing that according to an account written by Fei Hsin in 1436 A.D. its people were then practising Tantric sacrifices and offering human blood to wooden images. The little that is known of Sultan 'Abd al-Ghafur has been recorded elsewhere (*History of Pahang*: W. Linehan, pp. 29-34, J.R.A.S.M.B. XIV, pt. ii, 1936).

The next part of the two MSS. runs from § 24 to § 68 inclusive. §§ 24 to 66 are almost entirely a translation of Muslim Shafeite law.

What we have called § 67 is omitted by us, being § 25-27 of the *Undang-Undang Melaka* (van Ronkel's *Risalat Hoekoem Kanoen*, Leiden, 1919; pp. 42-47) a coincidence that proves a common archetype. It may be remarked, that though this passage in MS. B is broken and altered in order and though in both MSS. there are corrupt words and sentences, they provide material for the amendment of the Malacca text.

In MS. A the sections (omitted as § 67) may be summarized as follows:—

- (a) If cattle or goats trespass on cultivated land by night, they must be impounded: if they are killed, compensation must be paid. If a beast is killed for trespass by day, twice its value has to be paid.
- (b) The finder of a lost article pays double its value, unless he reports to the elders. If he reports, his reward is 10 per cent (*sa-puloh ěsa*).
- (c) The penalty for rape is death, unless the girl's relatives consent to her marriage, when a double dowry has to be paid. If the man will not marry, he is beaten and rebuked. If he is killed, his relatives may not retaliate.
- (d) If a person seizes (*rampas*) even 1 *pitis*, the owner may kill him.
- (e) If a gamester quarrel over a stake and complain to a judge, the stake is confiscated, and if he resist, he may be slain. Only over chess or *jogar* is a complaint proper.
- (f) Only a debtor has to work off his debt, not his family. If a debtor die, his family is responsible for only one third of his debts. The wife is free and may not be molested.
- (g) If a man has sold a slave and meets him, he may redeem him for the purchase price.
- (h) His master must pay 40 — to redeem a slave who has absconded to another country.
- (i) A free man who takes a raja's slave, himself becomes the raja's slave. If a slave takes a raja's slave, he receives 100 strokes.

- (j) The man who kills his slave, by divine law should be executed, by raja's law he has to pay 5 *tahil* 1 *paha*.
- (k) The man who hits a royal slave is executed or punished fittingly.  
—“These laws were written by order of Sultan Muzaffar, son of Mahmud, last Sultan of Malacca.”
- (l) If a ruler's slave is stolen, the fine is 14 times his value; if a raja's, 7 times; if a *mantri*'s, 5 times; if a *sida-sida*'s, 3 times; if a commoner's double his value.
- (m) Any one who catches a fugitive slave and fails to exhibit him for 3 days on the pier, is guilty of crime.

The differentiation in penalties for offences against the slaves of rulers, rajas and chiefs antedates the Malay conversion to Islam.

Similarly in the sections that follow (§ §68-92), while many of the provisions are Muslim, the death penalty for helping a thief, harbouring a slave and using yellow cloth, and ordeal by diving are all unknown to Islamic law.

An article on Old Malay Legal Digests and Malay Customary Law appeared in the Journal of the Royal Asiatic Society of Great Britain and Ireland (Pts 1 & 2, 1945) and a chapter on Malay Law in *The Malays* (Kelly & Walsh, 1947), both by R. O. Winstedt.

We are indebted to Professor A. S. Tritton, M.A., D. Litt. for help over quotations from Arabic, and to Enche' Zainal-'Abidin bin Ahmad for several suggested emendations.

## Outline of the Text

† † indicate doubtful passages in translation & texts.

This is a tract to guide rulers and viziers in Pahang, Perak and Johore, dating from the time of that great ruler Sultan 'Abd al-Ghafur.

(1) Rulers appoint Regents (*mangkubumi*) and Ministers to control justice and government; Treasurers to control State monies, make lists of slaves, calculate revenue and control all matters inside the palace; Temenggongs to have charge of forts and moats, of criminals, of markets, roads, towns, weights and measures, of the night watch; Herald's to carry into effect royal orders; Masters of Muster to keep a census of warriors; Captains to adorn and guard the country; Port Officers to control foreigners and shipping. Like a gardener, a Ruler arranges and discards.

Men learned in the law and Ministers must be loyal first to Allah and then to the King, just, patient, impartial, ready to risk life and limb for their lord, be courteous to all and daily present in the royal hall of audience.

The Treasurer must be honest, diligent, affable to royal servants, produce whatever the ruler wants if it is in the country; be considerate to female slaves; employ his wife in the palace as if she were a royal servant; inspect the royal food and strive to fill the royal treasury.

The Temenggong will have a body-guard, keep eyes and ears open, daily examine prisons and prisoners, be impartial, look for trusty followers, be indifferent to blame and take counsel with his colleagues.

Captains must be generous, guard their families, collect weapons and be expert at military exercises.

Port Officers will consult the Treasurer on matters of revenue; report ill-treatment of foreigners who bring trade to ruler and chiefs; collect foreign news, examine shipping and assist foreign traders.

Subjects must be stout-hearted, report all wrong to their ruler, even at the risk of incurring anger and without desire for praise, and they must keep the ruler's secrets. This world is of no worth or it would not be given to infidels. Ye are like men that dive into the sea for pearls, who have been given nose and mouth that they may breathe. As said Yafith the son of the Prophet Noh, Had not Adam's body been opaque, all hidden light would have been revealed to him, and but for his passions all curtains would have been opened to him, and but for the slanders of this world and its people, all truth would have been shown. Be not heedless of this world and the hereafter. For death is a drink that all must drink, a conveyance all must mount. As the poet says, the chessmen confuse the players and know that death will overtake them. The wise consider the everlasting, resist Satan, and knowing that they will soon remove from this world prepare for the journey. Gifts that command not loyalty, diligence without effect, enquiry without any secret to unravel, learning without patience, a ruler without subjects, instructions to those that hear not, are bootless.

1. Yellow curtains, cushion-covers, house-furnishings and garments, gold on napkins, gold tassels (*putar-putar*) and fringes are privileges of royalty. Their use by others is punished by confiscation or execution, unless their manufacture has been authorized.

But gold on curtain loops (*tēlinga tabir*) and embroidery is permitted.

2. Abandoned rice-fields may be borrowed or rented and returned at the proprietor's request. If he wants the crops (*kal*), it is as if they were bought from their owner.

One opinion is that no one may be prevented from cultivating an abandoned rice-field, unless it is being kept for some productive purpose or is near the owner's orchard.

3. Cultivators must make fences and ditches. If a buffalo or ox enters a fenced enclosure by night and is stabbed, half the value of the beast has to be paid; but a sounder opinion holds that the beast's owner must pay full compensation for damage to cultivation.

If a buffalo enters an unfenced enclosure by night and is stabbed, the cultivator has to pay its full value and the owner of the beast pays nothing (for the damage to the crops); if the entry is by day and the beast is stabbed, twice its value has to be paid, though if the animal is notoriously vicious, only half its value has to be paid and its owner must pay for damage to cultivation.

4. A trespasser on house property by night may be killed. A received opinion is that the trespasser should be captured and that full compensation must be paid for killing him, though a better opinion allows compensation of only half his value. If the trespasser runs away, he may be chased; but if he becomes invisible in the dark, the chase must be continued by others.

If a property is unfenced, the law is different. One must see if the trespasser is male or female, bond or free, and do not omit to enquire whether he is drunk or sober. He must be captured if possible and not killed. But unless one recognizes the offender, one cannot chase him, except he is carrying off stolen goods, when he may be chased and killed.

The penalty for trespass by day is capture, and if the trespasser resists, he may be killed.

Any one except a lunatic may be killed for hammering at a house door by night without the inmate's permission.

5. One escorting wife or relative may kill any person insulting his womenfolk. But the custom (*rēsam*) is that a drunkard may be arrested but not killed, even if he resist.

One escorting his mistress may stab any person who insults her, that is, if she is snatched while he is escorting her or if she is carried off to a man's house.



If the offender is a slave and is killed by a freeman, compensation of half his value must be paid, but there is no penalty for wounding the slave.

If both the parties are free-men, the *lex talionis* applies should the offender be killed, but there is no penalty for wounding.

So, too, if the parties are slaves.

If the offender is a free man and the insulted a slave, the *lex talionis* applies if the free man is killed, but the slave suffers no penalty for wounding beyond having to provide salve for the wound. One authentic opinion holds that in any case the *lex talionis* applies or compensation must be given.

Any one knocking the floor of a house may be killed. If he flees, he may not be pursued. If he is pursued and killed or wounded, the *lex talionis* applies unless he is mad. A lunatic or drunkard may be beaten and, if he resist, be killed.

People must avoid womenfolk in their walks.

6. Anyone who improperly abuses a man's wife may be killed. An authentic opinion lays down that he may be abused in turn but not killed, unless he fights on being abused in turn.

A husband may hit one who abuses his wife and kill him if he resists. If such a case cannot be settled, it may be taken to court when the offender will have his tongue slit.

So, too, persons who (?) lay false charges against others and slave who (?) lay false charge against slaves.

7. An adulterer is killed if caught by the husband or sworn to by a sure witness, even if he be a slave. An opinion based on custom is that the evidence of a slave cannot be accepted in absence of three proofs: first, the husband's dislike of his wife; secondly, public altercations between husband and wife with absence of cohabitation—of which the husband must produce evidence if he is to escape death for killing the lover; and thirdly the production of some precedent by the judge.

This section applies to the married and to those unmarried for want of a guardian or other excuse.

A concubine can be treated as a wife, unless she has received a royal command, and if her adultery has been with a royal slave or another and a royal slave is killed, the slayer is executed or fined.



Adultery may be between the free, or a free person and a slave, or between slaves. In the first case, the *lex talionis* applies in the case of killing; in the case of wounding, the two men are tied together and rolled about, or according to one opinion tarred and chalked, or according to another beaten or tarred and chalked but not killed.

Any one by the custom may escape the penalty for murder by becoming a royal slave. An adulteress who has been married is killed if the two men slay one another, but if there is only wounding, she receives 100 stripes. So too an unmarried woman (receives 100 stripes), but if both her lovers are killed she is beaten and publicly humiliated but not slain. If both parties to adultery are free persons and a slave is killed, half the slave's value has to be paid, the free man is rolled about, and the woman whether maid or married is beaten. If the woman is free and her lover a slave, and the slave is killed by the free man, there is the same penalty as above. If the free man is killed by the slave, the *lex talionis* applies and the woman if married is killed, or if she is not married, she is beaten and her lover is publicly humiliated. But according to the custom, the woman, if a raja's slave, will be only beaten or publicly humiliated. When a woman is a slave and her husband and lover are free men, if the free men are killed, the *lex talionis* applies and the woman is killed; but if there is only wounding, the man is beaten and humiliated, as above. If all the parties are slaves, the *lex talionis* applies in the case of killing and the woman is killed; if there is only wounding, the three are tied together and rolled about in the market-place.

So too all that quarrel in the wrong place.....

You must also wed those you have lived with long or newly....

8. A free man may strike a slave for abusing him and kill him if he resist. If the slave is killed while not resisting, full compensation must be paid. If the free man cannot settle the terms, it must go to court. If a free man abuse a slave and kill him for resisting, full compensation must be paid, but in the case of a raja the penalty is different. If a slave slap a free man, he may retaliate. The slave's hands are then nailed down, while the free man enjoys (*mēmakai* or? *mēmaki* 'berates') the slave's wife, until the *lex talionis* has been fulfilled.

9. A slave can be returned to his former owner within 6 months of the time of purchase, e.g. for lunacy, blindness, asthma, truancy, theft, unmannerly behaviour, aneurism or pregnancy.

A "moon-struck" slave must be returned not later than the first month.....

10. A free man removing a person's debt-slave or follower or servant or slave, without the knowledge of his master, is himself or by agent (*sakai*) responsible for any accident within a fixed radius before his return. The custom is that even if the owner is informed and there is any fault on the part of the remover or the slave dies at the task given him, then the full price of the slave has to be paid. If a slave goes to do a job, his owner should make enquiries or must bear the consequences. If he goes without the knowledge of his owner or after enquiry has been made, then the owner does not bear the consequences but the slave.

11. Of those lending to a slave without his owner's knowledge. If a slave has property, a loan may be made; if a slave is bankrupt, the loan may not exceed a *paha*, and more than that a lender will lose. An owner is not responsible for his slave's business debts.

#### 12. Of debts and pledges.

Debts are of two kinds. In one kind if the creditor is at fault, the debt is reduced by the amount of the penalty. For assault or molestation the debt is greatly reduced. So, too, a debt may be reduced by a dowry. The court decides the amount.

There are two kinds of pledges. The sum due in those that bear interest may never exceed 100%. But debts for overseas transactions that carry interest may never exceed the original sum, according to good authority.

As for pledges that carry no interest, when the debt has reached the value of the pledge, the owner must be told to redeem his pledge: if he cannot, as much is taken as amounts to the money concerned, and the rest returned to the owner. If the pledge is less than twice the sum, when + the interest due reaches the value of the pledge +, the owner must redeem it or the debt is defrayed by the pledge.

A pledge not carrying interest, when due for redemption, must be redeemed after the demand has been made two or three times in the presence of witnesses. If it is not redeemed, the lender takes his due and returns the rest. If the pledge is worth less than the money lent, the deficit becomes a debt. But Muslims must be merciful to borrowers and debtors.

#### 13. Of taking the child of a slave, abandoned by its mother.

The permission of the owner must be got before witnesses. The owner may let the child go, or + the adopter may be paid one third of the child's upkeep and the child belongs to the

owner + . If the owner is not informed, the adopter gets one-sixth of the upkeep, or according to one authentic opinion, he gets nothing and has to return the child, unless distance or something else makes it hard for him to inform the owner, when the ruling above holds.

14. Of hiring a slave without informing his owner.

If the slave is well-known to earn hire or to give any payment or rent to his owner, no compensation is due in the case of death or accident. Otherwise, full compensation is due for a casting-net and so on. If a slave is borrowed to climb a tree or dive for a casting-net and meets with an accident, compensation is paid. One customary ruling is that as the owner gave permission, only the price of the slave is paid.

Compensation is paid when a slave is borrowed for no special work, but not if he die by act of God or is seized by a tiger or killed by a snake and so on. No compensation is paid unless the borrower fails to take proper precautions for the man's safety or sets him to work not authorized by his master, when compensation is paid. The same rule applies for beasts.

There is a different law for weapons and articles burnt or lost at sea etc., when only half their value has to be paid, though compensation has to be paid if there is carelessness, unless there is a stipulation covering all loss.

15. Harboursing fugitive slaves.

If a fugitive slave comes to any one in forest, field or village, the slave must be taken before a judge; failure so to do involves having ears cut off, if a man, and being shaved and whipped if a woman and paying the value of any slave that dies or gets away along with the + value of his work + . Custom says that a free person should be only humiliated publicly.

There follows the scale of reward for recovering fugitive slaves according to the distance of various places on the east of Malaya.

16. Of sales through an, intermediary. The owner may buy back at cost price, not more. . . .

17. A boat adrift must be reported before witnesses. It can be used till its owner claims it when it must be returned. If it is found at sea, the finder is paid one-third of its value.

18. Things like gold and silver, if found, must be reported to a judge, when the finder will get a reward of a fifth of their value. Otherwise the finder is liable to be punished for theft.

19. A Raja is of higher rank than others. A free-man who kills a royal slave, becomes the raja's slave; if a slave, he has his throat cut, or if he has acted with his master's knowledge he is fined. No one must resist a royal servant. The humblest may strike, if grossly insulted, or report the matter to a judge.

20. Whoever kills cattle belonging to the ruler, repays fourteen-fold; if the cattle belong to a prince or the Bendahara, seven-fold; if to a Mantri or *sida-sida* or court herald, five-fold; if to a commoner, two-fold. If the offender is a slave, he may have nails driven through his hands or according to one opinion, repay the value of the cattle killed.

21. Any one selling royal ornaments or slaves or servants, shall repay seven-fold and be publicly reprimanded for a season. If a royal servant, he shall repay seven-fold and be reprimanded by his servitors for a year.

22. Of fines and their apportionment between Ruler, Bendahara, Maadulika, Mantri, Temenggong.

23. The punishment for treason is 360 tortures, confiscation of property, and servitude of family to the ruler. If the traitor die, he shall be quartered and the quarters cast to the four points of the compass. So, too, any collaborators. Failure to report treason entails cutting off the tongue and driving nails into the ears and plucking out of the eyes and casting away in a lonely spot.

This treatise was completed on 20th Muharram 1004 A.H. (25 September, 1595) for the purification of religious law; being the compilation of the just, the strong, the perfect Sultan 'Abd al-Ghafur Muhiyud-din Shah.

24. Trade is lawful, but the taking of interest unlawful. Gold cannot be traded against gold or silver against silver; things traded must be different.

25. (a) If a house is sold, whatever can be removed is not included in the sale.

(b) On the sale of land, trees are included but not a rice-crop, unless so stipulated. If the crop is perennial like pepper, the first crop belongs to the seller, those after it to the buyer. Fruit, if the blossom has fallen, belongs to the seller in the absence of any agreement; if the blossom has not fallen, to the buyer.

26. Goods may be returned at once for any flaw, but not after any delay except in the case of illness. . . . .

If a pregnant female slave is bought and give birth while in the possession of the buyer, the child belongs to the buyer and is not returned with the mother (if she is returned for any cause).

A slave can be returned at any time, if accustomed to run away or commit sexual offences or steal or is mad or dropsical or suffering from hernia or blind, deaf, suffering from psoriasis or dumb or having some secret flaw that comes to light.

An article with a fresh flaw may with the seller's consent be kept on payment of about 90% of its cost, or with an old flaw on payment of 80% ; otherwise it may be returned along with a small sum. If there is a dispute as to any flaw before the sale, the seller takes an oath, and if there is a dispute as to the proportionate price and both seller and buyer swear, the deal is cancelled.

27. Any article that can be sold can be given as security. Security must be given for a debt. The (creditor or) holder of a pledge does not have to replace it, if it be lost through no fault of his; but if it is lost by his fault, he has to replace it. A pledge shall not be restored to its owner on his paying half his debt but only when he has paid in full. If at the expiry of the agreed term, the debtor fails to redeem his pledge, it is sold by the court in liquidation of his debt.

On the application of persons who have property in the hands of a bankrupt, the court will prevent his disposing of it. If such a person discover his own property among the bankrupt's possessions, he can if he like take it and cancel any deal with him. If he discover half his property, he takes (?) two-third (*dua rakan sa-kali*) and leaves the rest to the creditors. After that the court forbids all disposal of the bankrupt's property just as it forbids the disposal of property by infants and lunatics.

28. A promise of compensation is not valid if a person has disavowed it or has no property. Promises are valid in commercial transactions, in exchanges, for example, of gold for gold, in the case of gifts, of (?) waivers, of loans and of piece-work.

If a person claims a house in another's possession and he admits the claim and agrees to pay 100 *timah*, the legal principle valid in commercial transactions applies; he can buy then and there or within three days. If a man claims 100 gold pieces (*dinar*) and the claim is admitted and an offer made for them of 1,000 *dērham*, the legal principle governing transactions in gold and silver applies. If a man agrees to pay 50 gold pieces, the legal principle waiving half applies. If a man wants a house or homestead and concludes a bargain for a year's tenancy, the legal principle for loans applies. If a man wants a house or homestead and bargains

to pay half and + accept half as a gift +, the bargain is not valid; they must first both advance their claims.

29. The law for guarantors. When a guarantor knows the proportions to be paid by cash and in future, he may guarantee but only in accordance with Muslim law. The owner of gold may claim it from a guarantor, and when on the order of the debtor the debt is paid, then payment may be asked from the person for whom one was guarantor; if the guarantor pays without such order to pay, then payment cannot be requested from the debtor and the legal principle governing gifts applies. One cannot guarantee to pay gold in silver.

30. One may go surety for immediate payment of a debt due by a certain time as well as for payment by a certain time of a debt due immediately. A partner cannot guarantee a partner. One may not guarantee to accept another day or guarantee a claim not revealed. In the event of the death of the person going surety or of the person for whom he gives surety, the guarantee is null and void.

31. The law governing sales where the seller fails to deliver. If the seller says "I sell to you" and the buyer says, "I accept," and there is no stipulation that the sale depends on the inclination of the person sold, then indebtedness is clear. But the seller is not liable, if a person sold dies or runs away or is recalcitrant. One cannot sell silver for gold or ready cash for an agreement.

32. One may not lend unless some one is to benefit. The thing lent must be permanent, not flowers for example. The borrower must return what he borrows to the place where he borrowed it.

If in the hand of the borrower what is borrowed dies or is destroyed, the borrower must replace it although the destruction were not his fault.

When the thing borrowed has been given, the borrower has no liability if he was not negligent in the use of it.

If a man order a person to work at a certain spot and give him a beast for his transport, then if the beast die or is destroyed, no restitution has to be made.

33. In investments the investor tells a person to take so many gold or silver pieces and employ them in trade, the profit to be divided proportionately between the two partners. . . . . If goods are destroyed not by his negligence, the trader is not liable. Agreements to repay the sum lent in a foreign country or to repay more



than originally agreed are void. There is no objection to a person borrowing without any agreement and then repaying more.

34. Trusts must be safe-guarded. If a slave worth 200 is taken and fall sick, half his value must be paid and he must be returned with a further payment.

35. The law relating to adjuncts of the soil and fruit-trees and all trees that go with land.

When a person sells such things to another, they are included in the sale and may not be sold to another; if there is any error about the number of such things or their price and another buy them, resort is had to an oath. If a claim is delayed for any reason except sickness, the law relating to adjuncts to land does not apply. If a man sell all such adjuncts and others approve selling them but there is one who does not selling them, the person who does not approve can take or leave them.

36. Payment for piece-work by workman or cook or work done by the day or month at a fixed price.

Whatever such a person injures without negligence has not to be replaced.

One may not agree with a weaver to make cloth for a quarter of its value, but on completion the usual payment must be made.

37. If a person rents a house, the rent lapses if the house is destroyed. The (?) tenant pays for the damage. If he likes, he can break his agreement and demand the return of rent paid in advance. For example: A man rents a house for 10 months for 100 pieces of tin; if after he has occupied it a month, the house collapses, he can ask back nine-tenths of the money paid. If he wants to continue there, he requests that the house be repaired.

38. The law as to renting land.

The letting of land to another to plant on the understanding that payment shall consist of the crop from one quarter of the land is illegal. It is legal to let for gold or silver or a fixed amount of foodstuffs.

39. Trees may be watered for a fixed period in return for a fixed amount of the fruit. If the land comprises rice-fields, the owner shall give seed to the man who waters it.

40. Admissions are of two kinds: one refers to obligations to Allah such as borrowing and fornication, which one may revoke;

but admissions about human rights cannot be revoked. For admissions to be valid a person must be adult, sane, willing and not acting under compulsion. If an admission concerns property, it must be in the form "That property belongs to so-and-so." If the admission is indefinite, clarification must be demanded.

The law as to admissions is the same for the hale and the sick.

41. The law as to felling forest that has an owner but has not been cultivated for rice. The feller must be a Muslim: the land must not be in any one's possession when the felling is done, and anything on the land belongs to the feller. If there are courses supplying more water than is required for irrigation, man and beast should not be prevented from drinking and persons downstream should get a share of it.

42. Of gifts. Goods that cannot be bought and sold cannot be given. A gift must be of a fixed thing unless it is received from a giver at the moment of the gift.

If parents and grandparents receive a gift from their children and grandchildren, it is valid so long as the article is in the possession of the recipient; if there is a change of articles, the gift cannot be received; as, if it is spurned and the children take it back, parents and grand-parents do not get another article and some one else gets the gift. If a father give a pregnant slave to his son (or daughter) and the slave gives birth while in that son's (or daughter's) possession, the infant belongs to the son (or daughter) and is not returned with the mother.

It is commendable to exchange gifts.

A *wakaf* or endowment may consist of crops or immovables, goods of permanent use, and the usufruct may belong to children and grandchildren alive and born afterwards; nor is it to be confined to one individual but belongs to all.

43. Of the recovery of fugitives (or lost goods).

A promise of so much for the recovery of a fugitive or of lost property must be honoured. If three persons recover the fugitive or the property, each gets a third share. If no sum has been promised, the custom of the place is followed.

44. Of the finding of a thing on a road, in the jungle or in a mosque.

The finder takes the article, writes down its description before witnesses and proclaims his find for one year. If the owner pro-



duces witnesses and claims, it is returned. If a claim is made without witnesses, return is not compulsory. In the absence of a claimant, then if he wishes for the article, the finder can appropriate it: if a claimant turns up, compensation is given. If a finder wishes, he can make the article a trust and not pay compensation for loss of it, unless loss is due to his fault: even if loss is his fault, he does not pay compensation, when the loss occurs during the year in which he proclaims his find. There is no need of proclamation if the thing found is a camel or a herd of cattle or deer or an ass astray; it is only necessary to feed the beasts. If a stray goat is found, the finder can announce it is his property and can sell it and take the money, but if he wants to eat it after proclaiming the find, then he pays the price of it in the event of its owner claiming.

A finder is liable for compensation if for lack of care a find is lost.

Objects found in the mosque at Meccah and female slaves standing in a prohibited relation to the finder are not appropriated.

45. If one finds an infant, one must take and cherish it. If there is property with it, it can be spent on its sustenance by order of the court; if there is no property and no one will maintain it, it is supported from public funds. If the infant had property and dies, it goes to the finder. To qualify for drawing from public funds a person must be a Muslim, a free man, adult and just.

A wealthy person is to be preferred of two individuals for the infant's maintenance. Countrymen are to be preferred to cherish a foundling (?) from the country.

When there are claimants to a foundling, no preference is to be shown to a Muslim over an infidel or to a free man over a slave.

A foundling in a Muslim country, or in an infidel country where there are Muslims, is regarded as Muslim.

If on his majority a foundling admits he is a slave, the admission is accepted unless he has previously admitted he was free.

46. If a person having come to years of discretion slay a Muslim, then whether male or female, big or small, the slayer is executed.

A Muslim should not be executed for killing an infidel or a free man for killing a slave or a father for killing his child.

There is (? no) *lex talionis* between a Muslim slave and a free infidel. If a Jew kill a Christian or an infidel (? a) fire-worshipper, he is not exempt from execution, even if he become a Muslim.

When a man kills many, he is executed for the first murder and fined for the rest.

If a murderer is ignorant whom he slays . . . . .

The *lex talionis* may be applied to all limbs, but is not applied to them when it is not applied to life.

A person is executed if possible (? with curses), but if that fails with weapons.

If a person lops both hands off an offender and he dies, the deceased's family can kill that person or cut off both his hands or accept a fine or pardon him.

47. By the *lex talionis* one may not exact a right (hand) for a left or a good finger for a deformed or a little finger for a fourth or a big tooth for a small: even if both parties agree, a sound finger may not be cut off in retaliation for a deformed. If a hand congenitally defective is cut off by a normal hand, that normal hand may not be cut off in retaliation; but a fingerless hand may be cut off for a normal hand and a fine exacted in addition for the loss of fingers.

The *lex talionis* for wounding applies only for injury to bones.

48. Of fines there are two kinds. There are large fines of one hundred camels, viz. 30 female camels aged 3 years, 30 camels aged 4 years and 40 pregnant camels. There are small fines of one hundred camels, viz. 20 camels 4 years old, 20 female camels 3 years old, 20 yearling camels, (20) male camels 2 years old, (20 she—camels 2 years old).

Some authorities say if no camels are available, 1000 gold dinar can be paid instead.

A fine for a woman is half that for a man.

A fine for a Christian or a Jew is one third of that for a Muslim.

The fine for other infidels is ten gold pieces less than the fine for a Muslim.

100 camels is the fine for loss of two hands, two feet, nose, two ears, two eyes, two eye-lids or two lips; also for loss of sight or speech or hearing or wits or taste or penis or testicles.

The fine for a tooth is 5 camels.

The value of useless limbs is assessed by the court.

The fine for a child in the womb is 10 gold pieces less than the fine for the mother.

If an infidel kills, free one of his non-Muslim slaves.

49. Fornication is of two kinds. That of the married is punished by lapidation, the offender being buried to the waist or, according to one account, the neck. That of the unmarried is punished by 100 strokes and banishment for a year.

Fornication of the married premises that they are Muslims, of years of discretion, sane and.....

Slaves male and female receive 50 strokes for fornication.

50. The penalties for sodomy and bestiality are those for fornication. If the offender stopped at caresses, he is sentenced to public humiliation, not to reach the minimum of 20 (? strokes).

Fornication is proved by confession or the testimony of four male witnesses.

51. Penalties for defamation.

The penalty for a free person accusing another of fornication is 80 stripes and for a slave (*'abdi*) 40. If a man's servant (*hamba*) is accused or an infidel, the penalty is public humiliation. There is no penalty for a father defaming his son. To be guilty of defamation a person must be a sane adult and not the father of the person defamed. The complainant must be a sane adult Muslim, married and never accused of fornication.

52. The penalty for drinking spirits is 40 strokes for a free man and 20 for a slave. The smell of drink is not sufficient evidence, which must consist of confession or the testimony of two witnesses.

53. The penalty for theft is the cutting off of the thief's hand, but he must be adult and sane and the thing stolen must be worth 1 *emas* 3 *kupang* and taken from its proper place. It must be the thing itself and not another like it.

For the first theft the right hand is severed at the wrist; for the next the left foot, for the third the left hand; and if the thief steals again, he is publicly humiliated (*taaziz*).

54. The penalty for robbery. If there is homicide but no robbery, the penalty is death; if there is robbery and homicide, the robber is executed and impaled for three days; if there is robbery but no homicide, the hands (& feet) of the robber are cut off, but if there is doubt as to the homicide, the robber is publicly humiliated; if he is killed before arrest, the property robbed is taken off him.

55. If a person comes to kill or rob or molest the inmates of a house, any one who kills him while evicting him is guiltless.

56. . . . When a beast is being conveyed and is being driven out or dragged, compensation is paid for goods destroyed. If it is at night and the beast has no keeper, compensation is paid; if it is daytime, no compensation is paid for rice-fields or plants.

If it is the fault of an owner for not looking after his beast, he pays compensation; but if the gates of a fenced rice-field are not shut, it is the fault of the rice-planter.

If a person keeps a cat that eats chicken at night, he pays compensation; but not if it occurs in day-time. When a cat is known to eat animals, if another's doves congregate . . . . .

57. A just ruler will invite a traitor to surrender, pardon him if he does and attack him if he does not. He will not capture or slay or confiscate the goods of any one who does not resist him.

58. No compensation is payable for the life or goods of a person fought for not paying tithes. But if in spite of compliance his goods are damaged, compensation is paid.

If a starving man ask food of one who has bought it, it should be given. If it is refused and there is a struggle and homicide occurs, the starving man is not to blame.

59. If a person renounces Islam, call him three times to repent and if he refuse, kill him and do not wash his corpse or have funeral prayers or bury him in a Muslim grave-yard.

60. If a person omits to pray and (a) denies or (b) admits the obligation, he is ordered three times to pray and to repent like an apostate. If he is obdurate, he is killed but neither his corpse nor his goods are destroyed and he may be buried in a Muslim grave-yard. As said the Prophet, "Whosoever deliberately omits to pray is almost an infidel, and if he does so thrice running, he is an infidel." But sickness excuses.

61. For Holy War one must be a male adult sane Muslim in good health, courageous and strong. Captured infidels may be

enslaved along with women and children, or adult males may be slain, enslaved, released or let go after seizure of their property. Whoever embraces Islam before capture, should have his goods and children preserved. Children should be made Muslims if parents or one of their grandparents on the male side have been Muslims or they are got while still small in a Muslim country.

62. In the case of claims the judge hears any witnesses. If the claimant has none and the defendant denies the claim, then if he likes the claimant may swear, or, if he refuse, his claim is dismissed. If goods have been entrusted to a person and he claims them, he takes an oath; or if goods are in the hands of two persons who both claim them, if they both swear, the goods are divided between them. Whoever swears to his own handiwork, (must declare) "Truly that is my work", and who ever swears as to the handiwork of another, must affirm "Truly that is so and so's work" or if he cannot identify it, "Truly I do not know that work."

63. Witnesses must be Muslims, adult, sane, free and just. One must look for any great sin a person has committed, and choose for witnesses those who are innocent even of lesser sins, not given to anger and living up to their reputation.

Four male witnesses are required to prove adultery.

Two male witnesses are required as to drunkenness, theft, cock-fighting, apostasy, cases involving retribution by life or limb, marriage, divorce, a person's freedom and his being a Muslim, trusts, agencies, wills and seeing the moon, except that one witness suffices for the new moon of the Fasting Month.

Two male witnesses or . . . . .but not female witnesses only are required to prove the return of merchandise and goods bought, sales and deposits, and the good condition of goods, and releases and debts and borrowing and payment for work done and partnerships and gifts and seizure of goods and their destruction.

Two male witnesses or one male and two females or four females are required to prove birth, virginity or its loss and female matters generally.

When a claim is affirmed on oath and denied, the witnesses must be heard in court.

A claimant must declare the nature of goods claimed, e.g. the kind and carat and weight of gold; he must declare the value of jewels, as their value does not depend on size. A claimant must produce witnesses, if he has them. If he has none, he may elect to swear, but if the defendant swears, the claimant loses; if the

defendant refuses to swear, then the claimant must swear or lose his claim. If a claim is against the dead or a lunatic or a minor or a person distant 24 hours' journey (if nearer, he is summoned) then there must be two witnesses and the claimant must swear, when his claim is upheld. If a man claim an adult male as his slave and the alleged slave says he was originally free, the claimant must produce witnesses and the defendant must swear; if there are no witnesses, let the claimants produce some and let the alleged slave too; if he fail, his slavery is proved.

64. If a person claims another as his slave and the alleged slave declares that the claimant or the person from whom the claimant bought him gave him his freedom, and the alleged slave produces witnesses that he is free and the claimant witnesses that he is a slave, greater credence attaches to the former and the alleged slave is pronounced free.

65. Great oaths are taken at the pulpit in a mosque on Friday, i.e. in claims for blood, and in cases involving marriage, divorce, return to a wife, freedom, the specification and extent of property, gold of 20 *mithkal* (each *mithkal* being 2 *emas* less one *kupang*) and goods worth 20 *mithkal* of gold or silver.

Lesser oaths that "By Allah that is not the truth or by Allah your goods are not in my possession" suffice for? indefinite (*yang tiada had dalam-nya*) work, or property worth less than 20 *mithkal*, when any claim is dismissed. Witnesses are accepted for offences against God and against man. If a witness speak without interrogation by a judge, he is termed a witness for God; if he speak as to a man's claim, his evidence is not admitted; if he speak without interrogation, he is termed officious.

A lying witness is publicly humiliated and punished by the court. If he is flogged, he shall suffer not more than 20 strokes. In all? indefinite (*yang tiada had-nya*) claims he is publicly humiliated and rebuked before the congregation with the reason stated.

Claimant and defendant are set before the judge. If a claim is admitted, it is allowed. If it is not admitted, the claimant is asked to produce witnesses and they are heard. If there are none, the defendant swears to attend two days hence. A judge should not deliver judgment at a time of excessive heat or cold or when he is very hungry or satiated or sleepy.

It is unlawful for a judge to take presents. He should be supported by the treasury or by the ruler.

66. Ministers and officials should sit in court from morning, for all will have to give account at the last day. A ruler's justice

is of no avail unless his judges and ministers are just. A Raja and his ministers are as flame and fuel. His subjects are as the ground (to support) a ruler, or as a Persian has said, "His people are the root and the ruler is the tree it supports."

67. A section here omitted is § § 25—27 of the Malacca Code.

68. All who find gold silver or cloth must exhibit it for three days on the pier. If there is no claimant, the article must be taken to a minister or official. Otherwise a finder shall be fined for theft.

69. Boats, oars, and paddles must be similarly exhibited at the pier.

70. If a slave is struck for impertinence and dies, the offender is fined his full price.

If a free man kill a slave, there is no blood penalty but he pays the full price of the slave.

If the son of a minister kill a commoner, his crime is exposed.....

If a person or animal is accidentally killed, the penalty is a fine.

An infidel who kills a Muslim is executed. If a Muslim kill an infidel, he is fined.

71. Any one who knocks at a house by night and tries to enter by force, whatever his rank, there is no penalty for stabbing him to death.

72. Any witness to a theft who does not denounce it is guilty of crime. If a man unloads stolen goods or is hired himself or his boat (by the thief), he is executed and his property seized by the ruler.

73. The tax on foreign merchandise is 20 per cent.

74. Whoever harbours a male or female slave for purposes of sorcery in his house by night is punishable by death.

75. The tax on betel-leaf, betel-nut, salt and spirits is 10 per cent. Such goods must be declared and the tax paid before they are sold. Otherwise the gentleman or slave (importing them) will be fined a *tahil*. The tax on gum resin and rattans is 10 per cent.



76. Yellow edgings on mats and curtains, yellow kerchiefs and house furnishings are forbidden; yellow coats, headkerchiefs and clothes are allowed; (? *corrupt*) wearers suffer the penalty of death. Not even the children of chiefs may wear gold anklets. No one may wear gold without royal sanction.

77 (a). If in a storm half a cargo is thrown overboard, the owner of the ship or junk pays its value, but not if all is thrown overboard. If on arrival at a place cargo is stolen and no letter is sent to its owner, half its value has to be paid.

If the vessel is not a ship (*kapal*) or junk, no payment has to be made if half the cargo is thrown overboard in a storm. If at any place there is a theft and it is not reported, half the value of the goods stolen has to be paid.

(b). If a person conveying goods from one village to another forgets them owing to illness, half their value has to be paid.....

78. If a free adopted child commit an offence against his adopter that child may be expelled or killed as is proper and all the property given be.....

79. If with the consent of one's *warith* one places oneself in the care of a decent person and later wishes to return (to one's own kin) it must be with the consent of the person with whom one has lived. If that person is at fault, one may leave. If he has tried to outrage one, he is fined 12½: if he has abused one improperly, one may go home with all the goods one brought. If the person with whom one has lived is not to blame, one may return home, leaving two-thirds of one's property behind.

80. If one adopts the child of another's slave and takes the child on voyages, in the first instance informing the owner of the slave but not afterwards, then the adopter has to pay half the child's price if he die and to pay half the value of his work if he does not die.

81. If one borrows with a promise to repay and is late by a single day, one has to work in the lender's tin mines: if such a person absconds, he becomes the slave of the mine-owner, provided he has not run away to a raja or a chief. If the borrower has made no promise to repay, when he absconds, he becomes a royal slave. If he leaves his work, he may be beaten but not to draw blood.....

82. When a foreigner arrives at an estuary, the Port Officer is informed.....Half is given to the informer, the rest the Port Officer gives to the ruler, and it is received by his Treasurer.



83. The fee for redeeming a captured fugitive slave is 1 *kupang* in the town, and 2 outside, but what the slave is carrying is not confiscated. If outside the confines of the country as at the bar, the fee is 5 *bidor*,—a list of fees at the various Perak ports and river-stations follows.

84. Any one seizing the property of another pays for its restoration, and if it is destroyed, pays its value in compensation. If it is a case of beasts or men, the man who has seized them is affirmed, when there are no witnesses. Whoever steals rice-seed, all the plants grown from it belong to the owner of the seed in perpetuity; if the seeds are destroyed, the man who took them has to pay compensation. (The seizure even of a piece of muslin is punishable by death MS. B.)

85. If a thing is given (for a term) and the term has not expired, no judgment can be given, even though the owner brings witnesses. Goods must be returned to the giver, not to his heirs.

86. A slave wounding a free man is.....

87. If a debtor die without property, his children may not be sold to defray the debt.

88. If a man becomes indebted without the knowledge of his wife and children, they are not responsible.

89. If a person enters a mine bringing a familiar spirit and the miner loses his ore, the offender is fined a *bahara* (or ? he has to pay for the damage).

If a sieve is smashed or a spade broken, they must be replaced. If a furnace is damaged, the fine is a measure of rice, a chicken, a *gantang* of spirits; a slave is (?) beaten. For other things the penalty is to replace them.

90. If a man molest a bird at a cock-fight, the arbitrator decides the number of mains that would have been fought and imposes a fine accordingly. If a pullet wins and is molested, the offender has to pay double the value of the bird.

91. For ordeal by diving 107½ *bidor* must be staked. Fees are paid to the Bendahara, the Temenggong, the workmen, to the successful diver, to the master of ceremonies, for the wager, for the life-line, to the herald, to the defeated diver, to the holder of the pole, and for the missive the diver carries.

92. There is no retaliation (*kisas*) for head-wounds except for those that expose the bone (*muziha*). For a head-wound that

cracks a bone (*hashima*), the penalty is 5 camels; if the bone is exposed (?) deeply, the penalty is a fine; if the skull is fractured (*munagqila*), the penalty is five camels; if the wound reaches the *dura mater*, the penalty is trebled; and so too if the brain is pierced (*damgh*).

### Appendix.

When an article entrusted to one's care is lost through no omission on one's part, one does not pay for it. If the holder uses it even with the owner's consent and it is destroyed during that use, he must defray its value. If the holder is going on a voyage, he returns the article to the owner or his agent or a *kadhi* or, if there is no *kadhi*, to the ruler. Should he take the article on his voyage and it is destroyed, he defrays its value. . . . . If the holder declares he has returned an article and the owner denies it but has no witnesses and the holder swears, that is not enough without witnesses. If the holder says he has returned the article to the owner's relatives on his instructions and the owner denies it on oath, the holder has to pay its value.

According to Muslim law a man must appoint his substitute agent for trade, marriage and divorce and claimant of any rights and pay for his services, without which he cannot claim damages for loss, unless the agent has been remiss.

An agent may not sell for future payment or on evident loss or without paying dues to the state: if the transaction is with the son of the agent, payment must be made before delivery of goods. If payment is not so made and the agent's son does not pay, the agent must compensate the owner.

### The Text

*Al-hamdu lillāhi rabbi l-'ālamīn, wa'l-'akibatu li'l-muttakīn wa'l-salawātu wa'l-salāmu la'l-sayyidina Muhammadin wa' ālihi wa-l-sahabihi ajma' in'. Waba'dahu, fahādhihi'l-risāla'l-muhtaraza fi bayāh mustalahat...al-mulūk wa'l-wuzarā Pahang dār al-Islam, hafizahū llāh ta'āla 'an al-āfat wa'l-inhidām (?) fakāna bahīman fi bayāh mustalahat...al-mulūk wa'l-wuzarā Pahang dār al-Islam, humām al-mu'azzam, al-jalīl al-muhtaram, al-fādīl bi-fadl illāh, al-malik al-mu'azzam Sultan 'Abd al-Ghafūr, wa badhdha 'adlahū wa-husnahū, wa-amma fadalahū wa-alamahu wa'ala am-raku wa-shā'nahū awdahā 'akāl-'ālamīn birrahū wa-burhānahū, wa-atāla 'umrahū wa-kawwāhu.*

Maka ini-lah surat risalat yang simpan (sink-n A) pada mē-nyatakan pēkerjaan sēgala raja-raja dan sēgala wazir-nya di-dalam nēgēri Pahang dan Perak dan Johor daripada masa Sultan yang

amat bésar kĕrajaan-nya ia-itu Sultan 'Abd al-Ghafūr yang di-kĕkalkan atas kĕrajaan-nya dari dunia datang ka-akhirat<sup>2</sup>.

Ada pun kĕmudian daripada itu mĕnguchap shukor-lah aku akan kurnia-nya yang tĕlah lalu lagi akan datang, bahawa di-jadikan aku daripada ummat kĕkaseh-nya Nabi Muhammad salla' l-lāhu 'alaihi wa's-salam, yang ia Pĕnghulu sĕgala Rasul-nya, di-titahkan ia kĕsudah-sudahan sĕgala firman-nya dan + m.s.nhukan + (? = mĕnaskhkan 'abrogate') sĕgala shari'at yang dahulu itu bĕrbuat 'adil sĕrta mĕlakukan amr bi'l-ma'rūf wanaha 'an il-munkar; maka jadi tĕrang-lah sĕgala 'alam dĕngan चाहaya ugama-nya, sĕjahtĕra atas-nya dan sĕgala kĕluarga-nya dan sĕgala sahabat-nya dan atas kita sakalian ummat-nya. Amin! ya Rabba 'l-'alamin!

Shahadan maka di-jadikan-nya antara sĕgala makhlok-nya ia-itu Raja sapĕrti firman Allah ta'ala di-dalam Kur'an *Inni ja ilun fi'l-ardi Khalifah*, hĕrti-nya, "Bahawa sa-sunggoh-nya aku hĕndak mĕnjadikan Raja dalam bumi akan ganti-ku," ya'ani Raja-Raja itu pada mĕngira-ngirakan ahual sĕgala hamba-nya, ia-lah mĕngawal dia; jikalau tiada Raja-Raja itu, nĕschaya tiada akan bĕrtĕntu ahual sĕgala ra'ayat-nya, maka jadi-lah mĕreka itu sapĕrti kambing tiada bĕrgĕmbala, maka di-makan-lah oleh yang kĕras akan yang lĕmah. Bahawa pada orang yang budiman itu ada-lah Raja dan Nabi itu umpama sa-bĕntok chinchin dua pĕrmata-nya. Sa-tĕlah nyata-lah, bahawa Raja itu pada mĕrtabat Nabi, bagi-nya mĕngikut a'f'al-nya dan mĕngira-ngirakan ahual-nya sĕgala ummat-nya, maka di-pĕrbuat-nya oleh Raja-Raja itu sĕgala pĕgawai-nya akan dinding tiang kĕrajaan, maka di-surohkan-nya supaya dapat-lah ia istĕrahat atas kĕrajaan-nya..

Bĕrmula di-jadikan oleh sĕgala Raja itu Mangkubumi dan Mantĕri, maka di-sĕrahkan-nya sĕgala hukum dan isti'adat tĕrtib kĕrajaan dan ahual sĕgala nĕgĕri, ia-lah mĕnĕntukan dia.

Dan di-jadikan-nya Pĕnghulu Bĕndahari, maka di-sĕrahkan-nya sĕgala khazanah-nya, dan mĕnyurat daftar sĕgala hamba-nya, dan mĕngira-ngira sĕgala hasil yang naik kapada-nya, dan mĕmĕ-rentah sĕgala pĕkĕrjaan-nya yang di-dalam pagar istana; ia-lah yang mĕnĕntukan sĕgala pĕkĕrjaan-nya itu.

Dan di-jadikan-nya Tĕmĕnggong, maka di-sĕrahkan sĕgala pĕkĕrjaan nĕgĕri ka-pada-nya sapĕrti kota, parit, dan sĕgala orang yang tĕrhukum, dan di-siasat-nya sĕgala ahual pasara, sapĕrti lorong dan pĕkan dan sapĕrti sukatan dan timbangan, hĕndak-lah gĕnap sapĕrti 'adat-nya, jangan bĕrlĕbeh-kurang; ia-lah raja pada malam mĕngawali sĕgala orang yang nakal di-dalam nĕgĕri, sĕnĕntiasa-lah tĕrtanggong pĕkĕrjaan itu atas-nya.

Dan di-jadikan-nya oleh Raja-Raja itu Bĕntara akan mĕm-baiki sĕgala pĕrentah dan mĕnjaga-jaga.

Dan di-jadikan-nya Kërah-Kërahan akan mënysurat daftar sêgala hulubalang bësar dan këchil: apabila sudah tÿrsurat daftar itu, dia-lah yang tahu akan bilangan mÿreka itu.

Dan di-jadikan oleh sêgala Raja-Raja itu Hulubalang akan pÿrhiasan kÿrajaan-nya dan bagi mÿnolakkan mara bahaya raja: ia-lah akan mÿndinding sêgala sÿtÿru musoh yang datang ka-nÿgÿri-nya, dan pÿrgantongan sêgala ra'ayat-nya; atas-nya-lah tÿrtanggung sêgala pÿkÿrjaan itu.

Dan di-jadikan oleh sêgala Raja-Raja Shahbandar ia-itu raja sêgala dagang; maka di-sÿrahhkan kapada-nya sêgala pÿkÿrjaan kuala akan mÿmÿreksa'i ahual sêgala pÿrahu yang pÿrgi datang, dan kapada-nya-lah tÿrsÿrah sêgala pÿkÿrjaan itu.

Shahadan di-mÿnangkan oleh sêgala raja-raja itu akan hamba-nya yang karib akan ganti mata tÿlinga-nya mÿnyidek-nyidek ahual sêgala tantÿra-nya dan mÿnanggong sêgala rahsia-nya.

Ada pun sêgala raja-raja itu umpama sa-orang utasan yang bÿrbuat tanaman; maka di-aturnya sêgala tanaman-nya itu maua-mana kÿsukaan hati-nya, ada yang layak di-tÿpi, ada yang layak di-atas jambangan, masing-masing di-hantarkan kapada mÿrtabat-nya; kÿrana maksud-nya bÿrbuat tanaman itu akan pusaka kapada anak chuchu-nya sÿrta mÿmbÿri manfa'at bagi diri-nya, sapÿrti bunga dÿngan bau-bauan, atau akan pÿrnaungan-nya atau akan ubat kÿsakitan-nya: dÿmikian-lah maksud-nya sêgala orang yang bÿrbuat tanaman itu. Shahadan tahu-lah ia akan chita rasa-nya dan sêgala buah-nya dan harum bau-nya sêgala bunga-nya tÿlah ma'alumkan kapada yang ÿmpunya tanaman itu, shahadan jika di-lihat-nya tiada akan mÿmbÿri manfa'at akan diri-nya, maka di-bantun-nya dÿngan ubi-akar-nya, di-ganti-nya pula dÿngan pokok yang lain. Dÿmikian-lah hal sêgala raja, sapÿrti bÿrbuat tanam-tanaman, maka itu-lah fa'edah-nya.

Ada pun fakih dan sêgala mantÿri itu hÿndak-lah mÿngamalkan tujuh sharat: *pÿrtama-tama*, shukor akan kurnia Allah ta'ala dan rasul-nya; *kÿdua*, di-dahulukan kÿbaktian-nya akan Allah ta'ala daripada kÿbaktian akan raja-nya; *kÿtiga*, hÿndak-lah sÿnÿntiasa chita-chita-nya itu mÿnyÿmpurnakan pÿkÿrjaan raja-nya jua dÿngan pÿbuatan yang 'adil, dan di-sÿgÿrakan-nya sêgala hukum hamba Allah yang mÿngadukan hal kapada-nya; *kÿempat*, hÿndak-lah jangan bÿrsalahan barang suatu pÿkÿrjaan-nya dÿngan dalil dan hadith; dan jangan lupa barang yang di-titahkan raja-nya itu, hÿndak-lah bÿrhadapan nyawa-nya dan hati-nya dan sêgala anggota-nya mÿngÿrjakan dia; *kÿlima*, redza-lah ia pada barang hal-nya, kÿrana yang redza itu daripada pÿrangai orang yang bÿbÿrapa kÿsakitan di-choba Allah ta'ala akan dia, jika ada ia sabar atas sêgala bala-nya itu, maka di-tinggikan-nya mÿrtabat-nya itu dan

di-përmuliai akan dia dëngan sëmputna këmuliaan; *këenam*, hëndak-lah di-pënjarakan-nya nafsu-nya daripada sëgala përangai yang këji sapërti firman Allah ta'ala di-dalam Koran: *Faman ya'mal mithkâla dharratin khatran yarahu, waman ya'mal mithkâla dhar-ratin sharran yarahu*; hërti-nya, barang siapa bërbuat këbajikan, nësçaya di-përoleh-nya këbajikan jua dan barang siapa bërbuat këjahatan, nësçaya di-përoleh-nya këjahatan jua balasan-nya itu; *këtujoh*, hëndak-lah sënëntiasa pagi dan pëtang ia hadzir di-balai raja, dan barang siapa yang tiada, maka di-suroh-nya panggil; dan di-ringankan-nya lidah sërta dëngan manis muka-nya bërkata-kata dëngan sëgala mëraka itu dan di-përsëmbahkan-nya barang yang di-dapati oleh 'akal-nya, dan jikalau di-murkai raja sa-kali pun, kërana yang 'adat hamba itu sëdia mënanggong murka dan nës-ta tuan-nya jua, maka sëmputna hamba nama-nya; itu-lah përangai yang mulia pada sëgala raja-raja.

Ada pun Pënghulu Bëndahari itu hëndak-lah ia mëngamalkan sëmbaran sharat: *përtama*, bënar pada barang kata-nya, kërana yang bënar itu mënnyambutkan tirai këkaseh-nya dan mënolakkan sëgala këjahatan diri-nya; *këdua*, usaha lagi himat akan pëmainan raja-nya; *këtiga*, mënjënakai<sup>3</sup> hamba raja yang tërsërah kapada-supaya kaseh dan redza-lah ia pada mëngërgjakan sëgala pëkërjaan-nya: *këempat*, dzahirkan sëgala barang yang di-këhëndaki raja-nya itu mëlainkan jika tiada di-dalam nëgëri itu, maka tiada-lah kapada-nya; *këlîma*, mëngasehi përëmpuan hamba raja yang karib di-dalam; *këenam*, di-masokkan-nya istëri-nya sapërti këlakuan hamba raja yang di-dalam astana; *këtujoh*, hëndak-lah sënëntiasa mënataap sëgala yang tërsërah kapada-nya kërana përsantapan raja datang daripada rumah-nya; shahadan akan hal dunia ini tiada sa-kali-kali dapat di-përchayaï; *këdëlapan*, jangan di-sëgëra-nya barang yang ada kapada-nya itu; *kësëmbilan*, hëndak-lah sënëntiasa chita-nya mëmënohi përbëndaharaan tuan-nya dan mënnyidek-nyidek apa-apa yang kësukaan hati tuan-nya: maka itu-lah përangai yang mulia pada sëgala raja-raja.

Ada pun Tëmënggong itu hëndak-lah mëngamalkan dëngan tujuh sharat: *përtama*, mënaroh pënjurit akan mëmëliharakan diri-nya; *këdua*, jaga; *këtiga*, jauh pënëngar-nya dan pënglihatan-nya—maka hëndak-lah ia pada tiap-tiap hari mëmëreksai sëgala orang yang tër hukum sapërti rantai dan bëlëngu dan kongkong dan pasongan dan pënjara, kërana pëkërjaan itu atas nyawa-nya; *këempat*, jangan mëmëandang muka-muka, supaya hasil sëgala pëkërjaan yang di-titahkan raja-nya; *këlîma*, hëndak-lah mënchari kërapatan yang baik, kërana pëkërjaan amat sukar; *këenam*, hëndak-lah ia sabar kapada barang suatu kata-kata yang di-dëngar-nya, kërana orang yang mëmuliakan amar tuan-nya itu sënëntiasa di-umpat-umpat dan di-chërcha orang; *këtujoh*, hëndak-lah ia sa-pakat këtiga-nya.

Ada pun yang hulubalang itu hendak-lah ia mengamalkan empat syarat: *pertama*, murah; *kedua*, menjaga segala keluarga; *ketiga*, menghimpunkan segala tipu berpérang; *keempat*, bermain pèlèbhagai senjata. Kérana yang hulubalang itu umpama sa-orang tabib, mènilek ia pada istèri-nya, maka di-kira-kirakan-nya dari-mana datang pènyakit akan dia, maka hendak-lah ia mènchari ubat-nya, di-hadzirkan-nya akan mènolakkan segala pènyakit dari-pada istèri-nya itu; maka itu-lah pérangai yang mulia pada segala raja-raja.

Ada pun Shahbandar itu hendak-lah ia mengamalkan lima syarat: *pertama*, hendak-lah ia muafakat dèngan Pènghulu Bèndahari kapada mèngira-ngirakan segala hasil raja; *kedua*, hendak-lah banyak shafakat dèngan segala dagang: dagang itu ma'amorkan nègèri dan mèramaikan bandar; jikalau tiada dagang, nèschaya tiada hasil akan raja, dan manfa'at akan diri-nya pun bèrkurangan: *ketiga*, jikalau dagang itu tèraniaya, maka hendak-lah sègèra di-sampaikan kapada segala orang bèsar-bèsar dan kapada raja; *keempat*, mènnyidek-nyidek khabar yang datang dari nègèri yang lain; *kelima*, di-sègèrakan tafahhus akan segala pèrahu yang pèrgi datang dan di-hadlirkan-nya segala kèlèngkapan mènolong segala dagang: itu-lah pérangai yang mulia pada segala raja-raja.

Ada pun segala hamba raja yang karib itu hendak-lah ia mengamalkan ènam syarat. *Pertama*, hendak-lah sènèntiasa karar hati-nya dan mata tèlinga-nya pada mènnyidek-nyidek apa-apa yang kèchèlaan tuan-nya datang dan yang mènnyakiti segala ra'ayat raja-nya itu, hendak-lah sègèra di-pèrsèmbahkan-nya pada raja, maka raja pun tahu-lah akan dia. Apa-bila di-kètahuì oleh raja tiada dèngan di-pèrsèmbahkan-nya, maka hati raja pun kurang-lah akan dia, ada-nya. *Kedua*, hendak-lah jangan dèngki ia dèngan sama-nya Islam, kèrana yang dèngki itu pérangai yang amat kèji dan pènyakit yang amat pèdeh, kèrana Allah subhanahu wa-ta'ala pun tiada pèrkènan, dan kapada raja pun tiada bèrguna dan di-atas diri pun akhir jadi kèsakitan,—hendak-lah di-buangkan-nya segala pérangai yang karatan itu. *Ketiga*, hendak-lah bèrani ia bèrdatang sèmbah pada kètika-nya, jikalau kira-kira di-murkaì raja sa-kali pun, kèrana 'adat hamba itu bukan mèmberì kèchèlaan kapada tuan-nya mèlainkan kèmuliaan kapada diri-nya jua. *Keempat*, jangan gh-rur<sup>4</sup> akan kurnia raja-nya dan harap kèbaktian, kèrana yang mègahkan diri itu bukan kèpujian-nya, ada-nya; dan jangan pada chita-nya, jikalau barang suatu pèrbuatan-nya tiada di-halusi raja-nya, jikalau sudah sa-kali pun pèrbuatan-nya itu, bahawa di-diamkan-nya, jangan pada kira-kira-nya akan raja itu malu muka akan dia, kèrana pèkèrjaan-nya yang dèmikian itu raja hendak mèlihatkan budi-nya atau mènantikan pada kètika-nya. *Kelima*, hendak-lah ia baik-baik mènaroh rahsia raja-nya, kèrana yang rahsia itu suatu amanat tuan-nya pada segala hamba-nya yang pilehan.



Sa-kali persëtua Raja Nushirwan bërtanya pada mëntëri-nya Khoja Buzurjmihir Hakim, "Hai Khoja! bëtapa përi orang yang mëngëluarkan rahsia tuan-nya?" Maka sëmbah Khoja, "Ya tuan-ku Shah 'Alam! ada pun orang yang mëndzahir rahsia tuan-nya itu, hukum-nya di-bunyikan ia ka-dalam bumi, supaya rahsia-nya raja itu tërbunyi." Kërana pëkërjaan yang ëmpat përkara itu amat mulia pada sëgala raja-raja dan amat sukar pada mëngërkakan dia: *përtama*, mënanggong amanat raja-nya; *këdua*, mënanggong rahsia; *këtiga*, bërdapat dëngan përangai tuan-nya; *këmpat*, di-masokkan-nya pada majlis sëgala përëmpuan; *këlima*, hëndak-lah di-ingatkan-nya barang këlakuan diri-nya dan sëgala sëmbah-nya jangan bërsalahan dëngan këhëndak tuan-nya, dan jikalau barang apa sa-kali pun, apa-bila di-dapat oleh raja bërsalahan këlakuan-nya daripada yang di-sëmbahkan-nya, maka tiada lagi di-përchaya oleh raja akan dia. Maka tiada-lah lëbeh kējahatan di-dalam dunia daripada hamba yang tiada di-përchaya oleh tuan-nya. Maka itu-lah yang ul-t-ul-t (olok-olok B. ; ? = awal-awal-nya) daripada përangai hamba yang di-ma'afkan oleh sëgala ra'a-raja itu sapërti firman Allah ta'ala di-dalam Kor'an: *Wa'at i 'u'llaha wa'at i'u 'l-rasula wa 'uli 'l'amri min-kum*, hërti-nya, bërbuat bakti-lah kamu akan Allah ta'ala, ya'ani mënjunjong amar-nya, dan ikuti oleh kamu akan rasul-nya dan orang yang mëmpunyaï përentah sa-tëngah daripada kamu ya'ani raja-raja kamu.

Shahadan bahawa tuan-tuan sakalian pun tahu-lah akan hal dunia ini yang lagi fama'; jikalau sa-kira-nya ia këlal pada sa-orang makhlok, nëschaya tëtëp-lah dunia ini bahagian orang yang dahulu. Sëkarang bëtapa dia jatuh pada kita sakalian? Sa-yogianya-lah kita mëngambil nasihat daripada-nya, dan jika kira-nya dunia ini mulia pada Allah ta'ala, nëschaya tiada-lah di-anugërahakan pada sëgala kafir yang durhaka akan dia. Tëtëpi sunggoh pun aku bërkata yang dëmikian itu, jangan pada sangka-mu aku tiada tama' akan dunia ini, kërana yang dëmikian itu pënglihatan kapada pangkat sëgala anbia' dan mërtabat sëgala aulia'.

Ada pun sëgala përbuatan ëngkau sapërti umpama orang mënyëlam mutiara di-dalam laut, sakalian tuboh-nya lënyap di-dalam ayer, maka di-anugërahakan-nya mulut-nya dan hidong-nya supaya jangan ia lëmas. Dëmikian-lah ada-nya sapërti kata Yafith anak Nabi Allah Noh 'alaihi a's-salam, "Jikalau tiada këlam jasad Nabi Allah Adam, nëschaya dzahir bagi-nya sëgala chahaya ghaib, dan jikalau tiada këras nafsu, nëschaya dzahir-lah bagi-nya tëtëmbat sëgala tirai, dan jikalau tiada fitnah dunia ini dëngan sëgala isi-nya, nëschaya tëtëunjokkan diri-nya sëgala hakikat." Maka hëndak-lah tuan-tuan sakalian jangan lalai akan ahual dunia ini dan masa dewasa yang lagi akan datang.

Shahadan yang maut mati itu minuman yang akan di-minum oleh sëgala makhlok dan maut mati itu suatu këndaraan yang

lagi akan di-kendarai sĕgala makhlok, dan maut itu sapĕrti kata sha'er:

*yudillu'l-ladzhi yalhū wa-yal 'abu baidaqun,*

*wa lam yadri anna'l-mawtu khalfahū yatlubuh*

hĕrti-nya, di-pĕrsĕsat oleh buah chatur akan yang bĕrmain dan yang bĕrsenda'kan dia dan tiada ia tahu akan kĕmatian-nya di-bĕlakang-nya mĕnuntut ÷ 5. Ada pun orang yang bijaksana itu di-mana tĕmpat-nya yang kĕkal di-pĕrbaiki-nya, dan di-kĕnal-nya sĕtĕru-nya shaitan di-lawan-nya akan dia, dan di-kĕtahuĭ-nya sĕgĕra akan bĕrpindah, maka di-sĕdiakan-nya bĕkalan-nya bagi diri-nya. Ada pun jikalau tiada kĕbaktian, sia-sia bagi-nya kurnia; dan jikalau (tiada B) di-pĕroleh, sia-sia bagi-nya usaha; dan jikalau tiada pĕkĕrjaan yang tĕrbunyi, sia-sia bagi-nya siasat; dan jikalau tiada sabar, sia-sia bagi-nya orang yang bĕrilmu, dan jikalau tiada ra'ayat, sia-sia bagi-nya raja; jikalau tiada bagi-nya pĕnĕngar, sia-sia bagi-nya pĕngajar.

Ada pun kĕmudian daripada itu, ini-lah mĕnyatakan hukum rĕsam di-dalam nĕgĕri Pahang dan Johor dan Perak yang ÷ tĕrpakai di-nĕgĕri Mĕlayu ÷ 6 daripada zaman dahulu kala.

(1) Bab yang pĕrtama pada mĕnyatakan sĕgala yang di-larangan oleh raja-raja ia-itu sĕgala yang kuning sapĕrti tabir dan alasan talam dan barang sa-bagai-nya sapĕrti pĕrhiasan rumah kamu, mĕlainkan sĕgala yang lĕkat pada tuboh kamu sapĕrti baju dĕstar kamu dan barang sa-bagai-nya; dan dĕmikian lagi ĕmas pun sapĕrti tĕtampan baju dan putar-putar<sup>7</sup> ĕmas dan rambu kain ĕmas dan barang sa-bagai-nya sapĕrti pĕrhiasan alat kĕrajaan. Maka barang siapa mĕmakai dia, hukum-nya di-rampas. Ada pun pada kaul khiyār<sup>8</sup> hukum rĕsam, di-bunoh, kĕrana ia mĕnyĕrupai alat kĕrajaan dan mĕlalui amar raja-raja, dan barang siapa hĕndak bĕrbuat dia, mĕlainkan di-pohonkan kapada raja, maka dapat di-pĕrbuat-nya. Ada pun pada kaul hukum rĕsam, sĕgala yang kuning itu dapat di-ambilkan akan tĕlinga tabir dan akan sibar sĕgala pakaian lain daripada yang tĕlah tĕrsĕbut itu; pakai-lah oleh kamu sakalian kĕrana ia akan mĕnambahi kĕmuliaan dan pĕrhiasan sĕgala raja-raja.

(2) Pĕri pada mĕnyatakan sĕgala tanah pĕrhumaan yang tiada di-pĕrhumaĭ oleh tuan-nya. Maka barang siapa yang hĕndak bĕrbuat dia, maka di-pinjam-nya pada tuan-nya atau di-sewa-nya; kĕmudian jikalau bĕrkĕhĕndak tuan-nya, di-kĕmbalikan kapada-nya; jikalau ia hĕndak akan dia, sĕgala kalĭ sĕpĕrti di-bĕli-nya kapada tuan-nya; maka hĕndak-lah kamu sakalian mĕnolong saudara kamu yang Islam.

Ada pun pada suatu khiyar hukum rĕsam tanah pĕrhumaan yang tiada di-pĕrhumaĭ oleh tuan-nya, tiada sa-kali-kali dapat di-



tégahkan akan barang siapa yang hëndak bërbuat dia, mëlainkan tanah itu di-larangkan sêbab hëndak mêngambil manfa'at dari-pada-nya atau tanah yang hampir dusun-nya.

(3) Përi pada mënnyatakan hukum rësam sêgala orang yang bërthanam-tanaman. Ada pun hëndak-lah pada sêgala kamu yang bërthanam-tanaman itu di-përbuat oleh kamu pagar dan parit, jangan taksir pada mënungguï dia.

Sa-bërmula tanam-tanaman itu atas dua përkara. Bahawa sa-nya tanam-tanaman itu ada bërpagar, jika masok kërbaü atau lëmbu, jikalau tërtikam pada malam, mënnyileh binatang itu, sa-bëlah harga-nya mënnyileh; tëtëpi pada kaul yang sah mënnyileh sëmua-nya harga-nya tanaman itu, di-sileh oleh (yang) ëmpunya kërbaü atau lëmbu.

Këdua, tanaman itu tiada bërpagar, maka di-tikam pada malam, mënnyileh sëmua-nya yang ëmpunya tanaman itu, tiada-lah di-sileh-nya oleh yang ëmpunya kërbaü; maka pada siang tërtikam, ësa pulang dua hukum-nya, mëlainkan jikalau sudah mashhor nakal-nya kërbaü itu, sa-hingga mënnyileh sa-bëlah harga-nya jua, maka tanaman itu di-sileh oleh yang ëmpunya kërbaü.

(4) Përi pada mënnyatakan hukum sêgala orang masok kampong orang pada malam hari, jikalau tërbunoh, mati sahaja.

Ada pun pada kaul yang sah, jikalau dapat, di-tangkap; jika tërbunoh, mënnyileh ia sa-harga-nya; tëtëpi pada khiyar, mënnyileh itu dëngan sa-tëngah harga-nya tëbusan. Jikalau ia lari, dapat di-ikut-nya itu sa-jurusan juga, hingga jatoh kësamaran, ikut-nya itu dëngan orang lain.

Mëlainkan kampong itu tiada bërpagar, maka tiada sharat yang dahulu itu; sa-hingga di-përeksai laki-laki atau përëmpuan atau harr atau 'abdi: jangan taksir atau mabok atau siuman. Jika dapat di-tangkap, tangkap, jangan di-bunoh; dan jika tiada mêngënal itu mëlainkan tiada dapat di-ikut-nya barang ka-mana; mëlainkan orang itu mënchuri mënmbawa harta-nya, barang ka-mana di-ikut-nya; jika tërbunoh, mati sahaja.

Jikalau masok pada siang, di-tangkap-nya; jika mëlawan, mati sahaja.

Dëmikian lagi, jika ia datang mënumbok pintu pada malam ëmpunya kampong dëngan kahar-nya, maka tiada di-bëri-nya izin oleh yang ëmpunya kampong, jika ia tërtikam, mati sahaja, mëlainkan orang itu zawwal 'akal.

(5) Përi pada mënnyatakan hukum sêgala yang mënmbawa istëri-nya atau saudara-nya atau barang kë'aifan-nya di-tëngah-nya,

jikalau di-tēmpek<sup>9</sup> oleh orang, jika tērbunoh, mati sahaja. Ada pun suatu ikhtiar hukum rēsam, orang yang mabok itu, jikalau dia mēlawan sa-kali pun, jika dapat di-tangkap, tiada harus di-bunoh-nya orang itu.

Ada pun ikhtiar hukum rēsam akan orang yang mēmbawa mukah-nya itu, jikalau di-maskharaī oleh sa-orang, dapat di-pērtikam-nya: itu pun atas dua pērkarā; suatu di-rēbut-nya pada tatkala mēmbawa-nya; kēdua, di-naiki-nya ka-rumah laki-laki itu.

Ada pun jikalau yang maskhara ia-nya itu 'abdi, jika tērbunoh ia oleh harr, mēnyileh sa-bēlah harga-nya; jikalau sa-hingga luka jua 'abdi itu, tiada-lah mēmbēri diat.

Jikalau harr sama harr, jikalau mati, di-kisaskan; jikalau luka saja yang maskhara, suatu pun tiada pērkenaan-nya.

Dēmikian lagi, jikalau 'abdi sama 'abdi.

Ada pun yang maskhara itu harr, yang di-maskharaī itu 'abdi, jikalau mati harr itu, kisas; jikalau luka sahaja, tiada dapat di-kisaskan sa-hingga di-bēri ubat luka juga oleh 'abdi itu. Ada pun pada kaul yang sah dēngan barang hal sa-kali pun, kisas hukum-nya atau mēmbēri diat.

Ada pun jika orang mēnggarodak rumah orang, jikalau tērtikam, mati sahaja; jikalau ia lari, jangan di-turut-nya; jikalau di-turut, jika ia mati atau luka, di-kisaskan hukum-nya mēlainkan orang itu zawwal 'akal; jika sēbab ia gila atau sēbab mabok-nya, di-pukul jua hukum-nya, dan jika ia mēlawan, di-bunoh sunggoh-nya.

Maka hēndak-lah pada sēgala yang mēmbawa istēri-nya itu, + bērsaudara + dari jauh, maka sēmpurna-lah ia orang yang budi-man. + Jika (tiada A) dēmikian, di-bunoh yang mēmbunoh itu +<sup>10</sup>. Ada pun syarat tēmpat itu sa-kira-kira tiada lēpas daripada-nya nama adab akan yang mēmbawa kē'aifan-nya itu. Maka hēndak-lah kamu sakalian, jikalau bērtēmu dēngan orang mēmbawa anak istēri-nya, hēndak-lah kamu sakalian mēnyimpang jauh-jauh; jikalau jalan itu sēmpit, bērbalik.

(6) Pēri pada mēnyatakan hukum rēsam sēgala orang yang mēnampar orang dan mēmaki istēri orang pada yang bukan patut tēmpat<sup>11</sup> ka-atas-nya, jika tērtikam, mati sahaja-lah. Ada pun pada kaul yang sah, tiada dapat tikam: sa-hingga di-balas jua, dapat. Tētapi akhiyar kata, jika ia mēlawan sēbab di-balas itu, jika tērbunoh, mati sahaja-lah.

Ada pun orang mēlaki istēri orang, maka di-tampar-nya oleh yang ēmpunya istēri, jika ia mēlawan, mati sahaja; jika tiada tēr-halusi oleh-nya, maka mēngadu ia kapada hakim, maka dēngan ikhtiar hakim mēnghukumkan dia; maka di-bēlah lidah-nya. Dēmikian lagi orang mēngadu-ngadu orang dan 'abdi sama-sama 'abdi bērmilek tuan-nya.

(7) Pēri pada mēnyatakan hukum sēgala orang bērzinah dēngan istēri orang atau dēngan kē'aifan-nya orang, jikalau di-dapat-nya oleh yang ēmpunya istēri atau dēngan kata sa-orang saksi yang bēnar, jikalau hamba orang sa-kali pun, ia di-bunoh. Ada pun pada suatu khiyar hukum rēsam, yang mēnēngar khabar daripada hamba orang itu, tiada dapat di-pērentahkan-nya mēlainkan kēmudian daripada bēroleh istidlal pada mēnyatakan mēlainkan dēngan tiga sharat: pērtama, bēnchi laki-laki itu akan dia; kēdua, khusumat shahr dēngan laki-laki dan pērēmpuan yang di-tahasarat<sup>12</sup> itu—maka hēndak-lah ikhtiar pada yang ēmpunya istēri mēnchari saksi pada mēmēreksaī dia; jika tiada dēmikian, di-bunoh yang mēmbunoh itu: kētiga, dēngan kias hakim mēngambil 'ibarat pada suatu dalil akan kēnyataan-nya.

Ada pun sharat ini pada sēgala orang yang nikah atau tiada dapat di-nikah kērana kētiadaan wali-nya dan barang sa-bagai-nya daripada sēgala barang yang tiada mēngharuskan nikah atas-nya. Jikalau kēlakuan-nya gundek-gundek<sup>13</sup> sapērti kēlakuan istēri-nya, maka dapat di-pērentahkan-nya mēlainkan dēngan dua hal; suatu, sēgala orang yang di-titahkan raja; kēdua, jikalau ada pērēmpuan itu bērzinah dēngan hamba raja pun ada, dēngan orang kēluaran pun ada, maka di-bunoh-nya hamba raja itu, di-bunoh hukum-nya yang mēmbunoh itu, atau di-dēnda sa-kati lima.

Ada pun zinah itu atas tiga bagai: suatu, harr sama harr; kēdua, harr dēngan 'abdi: kētiga, 'abdi sama 'abdi. Maka harr sama harr itu: jikalau mati, di-kisaskan; dēmikian lagi jikalau luka, kēmudian dari itu di-bērkas kēdua-nya laki-laki itu, maka di-guling: pada suatu kaul di-ta'azizkan kēdua-nya laki-laki itu; pada suatu kaul kadim hukum rēsam di-dēra saja atau di-ta'azizkan, tiada di-bunoh.

Ada pun pada kaul kadim hukum rēsam sēgala orang yang mēmbawa darah mati itu, lēpas ia daripada mati, jadi hamba raja. Maka yang pērēmpuan itu, jika sudah ia mērasai nikah dahulu, jika mati laki-laki kēdua-nya, di-bunoh ia; jika hingga luka sahaja, di-dēra sa-ratus akan dia. Dēmikian lagi, jika bēlum ia mērasaī tētapī jika mati kēdua-nya laki-laki itu, di-dēra ia lagi di-daukh,<sup>14</sup> tiada di-bunoh.

Ada pun jikalau pērēmpuan itu harr laki-laki itu pun harr, yang di-bunoh-nya itu 'abdi, di-ganti-nya dēngan sa-tēngah harga-

nya; maka harr itu di-guling, pĕrĕmpuan itu di-dĕra hukum-nya, mahu muhsin, mahu tiada muhsin.

Jikalau pĕrĕmpuan itu harr, laki-laki itu 'abdi, maka tĕrbunoh 'abdi itu oleh harr yang dia ada dĕngan itu, maka kĕmbali kapada hukum yang dahulu itu juga; jikalau harr itu tĕrbunoh oleh 'abdi, di-kisaskan 'abdi itu, pĕrĕmpuan itu di-bunoh hukum-nya jika ia muhsin; dan jika tiada ia muhsin, di-dĕra, laki-laki di-daukh. Tĕtapi pada kaul hukum rĕsam, jikalau pĕrĕmpuan itu 'abdi raja, maka sa-hingga di-dĕra atau di-ta'azizkan.

Jikalau pĕrĕmpuan itu 'abdi, laki-laki-nya harr, jika bĕrmatian sama harr itu, di-kisaskan, pĕrĕmpuan itu di-bunoh: dan jika bĕrlukaan sahaja, di-dĕra lagi di-daukh<sup>14</sup> yang laki-laki itu, sapĕrti hukum yang dahulu itu juga.

Dan jikalau 'abdi sama 'abdi<sup>15</sup>, yang mĕngambil pun 'abdi, bĕrmatian, di-kisaskan hukum-nya, pĕrĕmpuan itu di-bunoh; jika bĕrlukaan sahaja, di-bĕrkas kĕtiga-nya, maka di-guling di-tĕngah pasara.

Dĕmikian<sup>16</sup> lagi jikalau sĕgala orang yang bĕrkĕlahi bukan pada tĕmpat-nya.

Maka hĕndak-lah kamu sakalian nikah pada sĕgala yang sudah lama dudok atau baharu jikalau mĕngĕkal dia<sup>17</sup>.

(8) Bĕrmula bab pada mĕnyatakan hukum sĕgala 'abdi yang mĕnĕsta harr, maka oleh harr itu di-pukul-nya; jika ia mĕlawan, mati sahaja; jika tiada dia mĕlawan, jika tĕrbunoh, mĕnyileh harga 'abdi itu dĕngan harga tĕbusan; jikalau tiada tĕrhalusi oleh harr itu, mĕngadu ia kapada hakim, atas ikhtiar hakim-lah mĕnghukumkan dia. Jika harr itu maskhara akan 'abdi, maka di-lawan-nya, jika tĕrbunoh 'abdi itu, mĕnyileh harr itu dĕngan harga nilai yang bĕnar; hukum-nya yang kapada raja, lain pula. Bĕrmula jikalau 'abdi mĕnggochoh harr, di-kisaskan, kĕmudian di-pasak tangan-nya kĕdua, mĕlainkan harr itu mĕmakai<sup>18</sup> bini 'abdi hingga dia kisaskan sahaja juga, hukum-nya.

(9) Pĕri pada mĕnyatakan hukum mĕngĕmbalikan sĕgala hamba orang yang bĕrjualan. Maka barang siapa mĕnĕbuskan dia, hingga ĕnam bulan lama-nya dapat di-kĕmbalikan kapada tuan-nya. Ada pun 'aib yang dapat di-kĕmbalikan-nya itu sapĕrti gila atau buta larangan atau isak atau pĕlari atau pĕnhuri atau mĕnĕhabul tuan-nya atau busong darah bunting. Mĕlainkan hamba itu tĕbusan baharu datang, maka hingga-nya yang dapat di-kĕmbalikan lagi sa-kadar anak bulan, pĕrtama bulan jua; jikalau lĕpas daripada itu, tiada-lah di-kĕmbalikan lagi, mĕlainkan 'aib-nya itu pada tuan-nya yang bĕrjual dia, maka kĕmbalikan<sup>19</sup> sapĕrti hukum yang dahulu itu.

(10) Përi pada mënnyatakan hukum sĕgala orang mĕrdĕheka yang mĕmbawa utang-utangan orang atau sakai orang atau biduanda orang atau hamba orang tiada dĕngan sa-tahu pĕnghulu-nya atau tuan-nya; jikalau barang suatu hal-nya, tĕrtanggong atas yang mĕmbawa dia, ya'ani atas diri-nya atau sakai-nya sa-lagi bĕlum kĕmbali kapada pĕnghulu-nya atau tuan-nya. Ada pun jika mĕmbawa dia sapĕrti yang tĕlah tĕrsĕbut itu, jikalau ka-hulu Tĕluk Ēmas sĕrta + alkas + ..... ya'ani hĕngga Pel-k; jikalau ka-laut hĕngga Pĕnor dan B.nch.h, jikalau barang suatu ahual-nya, tiada-lah tĕrtanggong atas-nya.

Ada pun pada suatu kaul hukum rĕsam, jikalau taksir yang mĕmbawa dia itu sapĕrti di-lalui-nya hĕngga yang tĕlah tĕrsĕbut itu dĕngan sa-tahu yang mĕmbawa dia atau mati dĕngan kĕrja yang di-suroh kapada-nya itu, mĕnyileh sa-harga-nya, maka tĕr-utama sĕgala orang yang mĕmbawa 'abdi orang itu dĕngan sa-tahu tuan-nya. Maka hĕndak-lah sĕgala hamba orang yang pĕrgi mĕn-chari itu, dĕngan tafahhus tuan-nya; jikalau tiada dĕmikian itu, tĕrtanggong atas tuan-nya. Mĕlainkan pĕrgi-nya itu tiada dĕngan sa-tahu tuan-nya atau kĕmudian daripada tafahhus tuan-nya, maka tiada-lah tĕrtanggong atas tuan-nya mĕlainkan atas-nya juga.

(11) Përi pada mĕnyatakan hukum sĕgala orang yang mĕngutang hamba orang yang tiada sa-tahu tuan-nya.

Ada pun yang hamba orang itu atas dua bagai: pĕrtama, hamba orang itu ada bĕrpunya (milek A), maka dapat mĕngutang dia; kĕdua bagai, hamba orang itu muflisi, maka tiada dapat mĕngutang mĕlainkan sa-paha; jikalau lĕbeh daripada itu, hilang harta-nya. Ada pun kata kami ini pada orang yang mĕngutang sah, bukan pada orang mĕniaga dĕngan dia; jikalau pada hal bĕrniaga, tiada harus di-pĕrhilang harta-nya, dan tiada tĕrtanggong atas tuan-nya. Maka hĕndak-lah kamu sakalian mĕngutang sĕgala hamba orang itu mĕnilek kĕlakuan-nya supaya jangan bĕrniaga kĕmudian.

(12) Përi pada mĕnyatakan hukum sĕgala orang (yang) bĕr-hutang bĕrgadai.

Ada pun utang itu atas dua bagai: sa-bagai, yang mĕngikutkan utang-nya, jikalau barang suatu salah-nya, maka di-hukumkan, oleh tĕmpat bĕrutang di-kurang utang-nya mana kira-kira diat-nya. Mĕlainkan sangat ziadah-nya di-pukul-nya atau di-nakali-nya dĕngan kahar-nya. Itu pun dĕmikian juga di-kurang utang-nya mana kira-kira-nya isi kahwin-nya, mithal-nya. Di-dalam pada itu pun mana ikhtiar hakim pula mĕngira-ngira dia.

Ada pun gadai itu atas dua pĕrkara: suatu gadai bĕrbunga itu, jikalau bĕrapa lama-nya sa-kali pun, hĕngga ganda juga. Dĕ-mikian lagi sa-hĕngga hutang yang bĕrbunga dan yang mĕngambil

.....atum.n.....<sup>20</sup> ka-laut. Ada pun pada kaul yang sah tiada sa-kali-kali dapat mēlēbehi daripada pohon-nya.

Ada pun gadai yang tiada bērbunga itu, jikalau datang kapada ahad ganda-nya, maka hēndak ia mēmbēri tahu kapada yang ēmpunya gadai mēnyuroh mēnēbus gadai-nya; jika ia tiada tērtēbus, mana kira-kira kapada ēmas-nya, itu jua ada di-ambil-nya, barang lēbeh-nya di-kēmbalikan kapada tuan-nya. Jikalau sa-kira-nya gadai itu tērkurang daripada ganda ēmas, sa-hingga datang had chukup bunga-nya itu, hēndak-lah ia mēnyuroh mēnēbus dia pada yang ēmpunya gadai, dan jika tiada tērtēbus oleh-nya, sudahlah dēngan itu jua hukum-nya.

Ada pun yang gadai sahaja itu apa-bila datang pada janjian, hēndak-lah ia mēmbēri tahu mēnyuroh mēnēbus gadai-nya itu dua tiga kali dēngan di-pērsaksikan-nya; jika tiada jua ia mahu mēnēbus dia, di-urupkan-nya<sup>21</sup> atau di-kērat-nya pada yang harus di-kērat,<sup>22</sup> mana kira-kira ēmas itu di-ambil-nya, barang lēbeh-nya di-kēmbalikan-nya pada tuan-nya. Jikalau kurang gadai itu daripada ēmas-nya, barang yang kurang-nya itu jadi utang-nya. Di-dalam pada itu pun hēndak-lah banyak-banyak shafakat kamu akan sēgala orang yang bērgadai dan yang bērhutang; dēngan ikhtiar hakim pula mēmbicharakan dia, supaya jangan jadi amat bērsalahan dēngan hukum Allah ta'ala.

(13) Pēri pada mēnyatakan hukum sēgala orang yang mēngambil anak hamba orang tērbuang oleh ibu-nya.

Ada pun barang siapa mēngambil dia, hēndak-lah mēmbēri tahu tuan-nya: jikalau sudah dēngan izin tuan-nya, hēndak-lah di-pērsaksikan-nya. Ada pun izin tuan-nya itu atas dua bagai: pērtama, mēlēpaskan dia sa-kali; kēdua, mēnyukakan<sup>23</sup> pada mēmēliharakan dia. Ada pun izin yang mēnyatakan<sup>23</sup> pada mēmēliharakan itu, sa-pērtiga harga, sa-bahagi akan mēmēliharakan dia, dēngan itu kēmbali kapada tuan-nya. (Ada pun, jika tiada dēngan sa-tahu tuan-nya A), maka di-bahagi ēnam, sa-bahagi akan yang mēmēliharakan dia. Ada pun pada kaul yang sah, suatu pun tiada di-pēroleh-nya, dēngan itu kēmbali kapada tuan-nya, kērana ia mēlalui amar raja itu; mēlainkan sukar ia akan mēmbēri tahu tuan-nya sapērti tēmpat-nya jauh dan barang sa-bagai-nya, maka kēmbali kapada hukum yang dahulu itu.

(14) Pēri pada mēnyatakan hukum sēgala orang yang mēngupah hamba orang tiada sa-tahu tuan-nya.

Ada pun jikalau hamba orang itu mashhor ia mēngambil upahan atau yang mēmbēri hasil akan tuan-nya atau sewa-nya,



jikalau mati atau barang suatu ahual-nya, tiada mēnyileh, + jala<sup>24</sup> dan sa-bagai-nya, mēnyileh sa-harga-nya +.

Ada pun jikalau di-pinjam kapada tuan-nya saperti naik kayu atau mēnyēlam jala<sup>25</sup> dan barang sa-bagai-nya, jikalau barang suatu ahual-nya hamba orang itu, mēnyileh ia. Ada pun suatu kaul hukum rēsam mēnyileh itu dēngan harga-nya juga, kērana pēkērjaan itu dēngan sudah izin tuan-nya.

Ada pun jikalau di-pinjam-nya itu tiada tērkhass dēngan suatu pēkērjaan, jikalau barang suatu hal-nya, mēnyileh ia. Mēlainkan mati-nya itu dēngan sudah hukum Allah ta'ala; lain daripada itu, saperti di-tangkap harimau atau patok ular dan barang sa-bagai-nya daripada sēgala kēmataan yang mana jatoh atau dēngan ikral tuan-nya, jikalau barang suatu hal-nya pun, biar-lah; maka tiada-lah ia mēnyileh, mēlainkan taksir atas yang mēminjam pada mēmēlihara dia. Atau dēngan kērja yang lain daripada izin tuan-nya, jikalau barang suatu hal-nya, mēnyileh ia. Dēmikian-lah lagi kēhēndak-nya sēgala binatang yang bērnnya.

Ada pun hukum ini bērsalahan dēngan hukum mēminjam sēgala harta saperti sēnjata dan sēgala pērkakas pērhiasan; tētapi pada kira-kira harga-nya jika tērbakar atau karam dan barang sa-bagai-nya, mēnyileh ia dēngan sa-tēngah harga-nya, itu pun jikalau lēpas nama taksir daripada-nya, jikalau barang suatu ahual-nya mēnyileh ia, mēlainkan dēngan ikral tuan-nya pada sēgala kēbinasaan-nya itu, tiada ia mēnyileh. Ada-nya.

(15) Pēri pada mēnyatakan hukum sēgala orang yang mēnaroh hamba orang lari.

Ada pun barang siapa diam di-hutan padang istimewa di-nēgēri, jikalau ada orang lari datang kapada-nya, hēndak-lah di-bawa-nya pada hakim; jikalau tiada dēmikian, di-hukumkan ia; jika laki-laki, di-daikh<sup>26</sup> pohon tēlinga-nya; jika pērēmpuan, di-chukor lagi di-manau; jikalau mati atau lari hamba orang itu, kēna mēngganti harga-nya lagi di-kira-kira isi buat-nya<sup>27</sup> sa-lama-nya diam kapada-nya itu. Ada pun pada suatu kaul hukum rēsam, jika ia mērdēheka, sa-hingga di-ta'azizkan juga.

Maka ini-lah kami sēbutkan 'adat tēbus sēgala hamba orang yang lari itu; jikalau di-dalam kota. sa-kupang dinar; jikalau di-luar kota, hingga 'amarat nēgēri, qua kupang dan tiada jadi rampasan sēgala pembawakan-nya. Ada pun di-luar 'amarat, saperti di-hilir Kanjong<sup>28</sup> dan ka-hulu Sungai Lintang tiga kupang tēbus-nya dan barang pembawaan-nya saperti pisau parang dan sēgala bēnda yang tērkurang harga-nya jadi rampasan, barang yang lain daripada itu kēmbali kapada tuan.

(16) Përi pada mēnyatakan hukum sēgala orang yang bër-jual dēngan orang dari-pada sa-orang kapada sa-orang, kēmudian jikalau bërtemu dēngan tuan-nya, jika bërkehēndak tuan-nya akan dia, di-tēbus tuan-nya sa-pēnēbus, tuan-nya yang baharu itu tiada dapat lēbeh, di-pērhilangkan harta orang yang mēnēbus itu, mēlainkan dēngan tuan-nya (atas B) yang bërjual përtama itu jua dapat hasil-nya. Ada pun ka-hilir kuala sa-ēmas, hingga Tërusan ēnam kupang,<sup>29</sup> hingga Bēnjah<sup>30</sup> kurang sa-kupang dua ēmas, hingga Bira<sup>31</sup> dua ēmas, hingga Mērchong<sup>32</sup> tiga ēmas, hingga Rompin sa-paha, Pontian lima ēmas, hingga Endau tiang bēlah, hingga Mēr-sing dua ēmas, hingga.....<sup>33</sup> tēngah tahlil. Ada pun ka-sa-bēlah sana Kuala Pahang Tua sa-ēmas, hingga Pēnor ēnam kupang, hingga ka-lautan<sup>34</sup> dua ēmas, hingga ka-Kērmasan<sup>35</sup> sa-paha, hingga Paka lima ēmas, hingga Dungun tiang bēlah, Rantau Abang tujuh ēmas, hingga Trēngganu tēngah tahlil; jikalau ka-hulu sungai hingga Kētapang sa-ēmas, hingga Antik<sup>36</sup> lima kupang, hingga Salang ēnam kupang, hingga Lubok Paku kurang sa-kupang dua ēmas, hingga Kuala Jēmpul dua ēmas, hingga Pēngaling<sup>37</sup> dua ēmas sa-kupang, hingga Kuala Bēra tiga ēmas, hingga Kuala Tēriang kurang dua kupang sa-paha, hingga Sēmantan sa-paha, hingga Pasir Mandi tēngah lima ēmas, hingga Lubok Pelang lima ēmas, hingga Tambangan tiang bēlah, hingga Jaka kurang dua kupang tujuh ēmas, hingga Kuala<sup>38</sup> tujuh ēmas, hingga Sēliusing tēngah tahlil, di-dalam Tēmbēling tēngah tahlil: jikalau lēpas dari itu sa-pērdua harga tēbus-nya, tētapi pada kaul hukum rēsam kata-nya sa-pērdua harga-nya itu dēngan harga-nya tēbus-nya juga. Dēmikian lagi sēgala ujung karang yang di-laut pun, jikalau lēpas daripada Sēdili dan Trēngganu. Ada pun yang kami sēbutkan, jikalau ka-hulu Lapas (? = Lipis) daripada Kanja<sup>39</sup> dan ka-hilir Lapas dari Sungai Lintang itu barang ada pēmbawakan-nya, sa-puluh ēmas yang mēndapat dia.

(17) Përi pada mēnyatakan hukum sēgala orang yang mēn-dapat pērahu hanyut.

Ada pun jikalau di-dapat-nya, hēndak-lah di-bawa-nya ka-nēgëri di-përsaksikan-nya;<sup>40</sup> samēntara bēlum bërtemu dēngan tuan-nya, di-pakai; apabila bërtemu dēngan tuan-nya, di-kēmbali-kan-nya. Ada pun jikalau ada di-laut di-dapati-nya pērahu itu, sa-pērtiga harga-nya, sa-bahagi akan yang mēndapat dia.

(18) Përi pada mēnyatakan hukum sēgala orang yang mēn-dapat barang suatu sapërti ēmas perak dan barang sa-bagai-nya, hēndak-lah di-bawa-nya kapada hakim di-përsaksikan-nya. Jikalau tiada dēmikian, maka kēmudian kētahuan benda itu, maka di-hukumkan ia sapërti hukum pēnchuri, jikalau sudah di-bawa-nya kapada hakim di-kēluarkan-nya sa-puluh dua akan<sup>41</sup> yang mēn-dapat itu.



(19) Përi pada mēnyatakan hukum sēgala kēlēbahan 'aiyil raja-raja daripada 'aiyil kamu sakalian.

Ada pun barang siapa mēmalu hamba raja lalu mati, jikalau harr, masok ulur pada raja; jikalau 'abdi, di-kērat leher-nya; jikalau dēngan sa-tahu tuan-nya, di-dēnda sa-kati lima. Maka hēndak-lah kamu sakalian jangan mēlawan sēgala hamba raja, jikalau sa-bagai-mana sa-kali pun. Ada pun yang dza'if pada hukum rēsam jikalau hamba rajā itu sangat maskhara-nya akan dia sapērti atas kē'aifan-nya yang tiada dapat di-sabarkan-nya atau tiada dapat bērlēpas diri-nya daripada tangan-nya, jikalau ada sapērti sharat ini, maka dapat-lah ia mēndatangkan tangan-nya kapada hamba raja itu atau barang salah-nya bēri tahu pada hakim atau pada pēnghulu-nya raja mēnghukum dia.

(20) Përi pada mēnyatakan hukum sēgala orang yang mēm-bunoh kērbau lēmbu raja.

Ada pun barang siapa mēmbunoh dia, ēsa pulang dua kali tujuh hukum-nya; jikalau anak raja, ēsa pulang sa-kali tujuh hukum-nya. Dēmikian lagi akan Bēndahara ēsa pulang tujuh jua; jikalau mantēri, ēsa pulang lima hukum-nya; jikalau sida-sida bēntara, ēsa pulang lima hukum-nya; jikalau ra'ayat, ēsa pulang dua hukum-nya. Ada pun jikalau 'abdi, di-pasak tangan-nya. Ada pun pada kaul yang sah sa-hingga ēsa harga-nya jua kira-nya.

(21) Përi pada mēnyatakan hukum sēgala orang bērjual pēr-hiasan raja atau sakai raja atau budak-budak raja. Jikalau orang yang bērtēntu, ēsa pulang tujuh hukum-nya lagi di-katai di-hadapan majlis. Jikalau hamba raja, di-ganti-nya ēsa pulang tujuh, lagi di-suroh nēsta pada sakai-nya: jikalau orang yang bērtēntu, sa-hingga sa-musim lama-nya; jikalau hamba raja, sa-tahun lama-nya. Ada pun jikalau lalu daripada itu datang-lah had akan dia sapērti yang tērsēbut itu. Ada-nya.

(22) Përi pada mēnyatakan hukum dēnda.<sup>42</sup>

Ada pun dēnda yang sa-kati lima tahlil itu, lantin-nya<sup>43</sup> lima tahlil sa-paha, pēmakanan-nya tēngah tiga ratus timah. Ada pun faedah-nya yang sa-kati lima tahlil itu, pada Raja sa-kati, yang lima tahlil itu akan Bēndahara, lantin-nya akan Mēntēri, pēmakanan-nya akan Tēmēnggong.

Sa-bagai lagi, dēnda yang sa-puluh tēngah tiga tahlil itu, lantin-nya tiga tahlil sa-paha, pēmakanan-nya sa-ratus tēngah tiga-puluh timah; faedah-nya sa-puluh tahlil kapada Raja, tēngah tiga tahlil akan Mandulika, lantin-nya akan Mēntēri, pēmakanan-nya akan Tēmēnggong.

Sa-bagai lagi, dēnda yang tujuh tahlil sa-paha itu, lantin-nya sa-tahlil sa-paha, pēmakanan-nya tēngah ēmpat-puluh timah. Ada pun faedah-nya itu ēnam tahlil pada Raja; sa-tahlil dua-bēlas ēmas akan Mandulika, lantin-nya sa-tahlil sa-paha akan Mēntēri, pēmakanan-nya tēngah ēmpat-puluh timah akan Tēmēnggong.

Ada pun yang lain-lain daripada itu sēgala yang kēchil-kēchil lima tahlil sa-paha dan tiga tahlil dan dua tahlil sa-paha dan sa-tahlil sa-paha, itu-lah dēnda yang akan makan Mandulika dan Mēntēri dan Tēmēnggong. Ada pun daripada kēchil itu, jikalau hamba raja, dēnda-nya itu akan Raja juga; jikalau kadar ra'ayat, maka akan Mandulika dan Mēntēri dan Tēmēnggong dan sēgala orang yang mēmēgang pēkērjaan-nya itu.

Ada pun banyak-banyak ikhtiar sēgala yang budiman pada kira-kira itu, kērana sēgala pērbuatan itu lagi akan di-kiraī Allah subhanahū wa-tā'ala pada hari yang kēmudian, sapērti sabda Nabi salla'llahu 'alaihi wa-salam: *al-'insanu murakhabun 'ala 'l-khata'i wa'l-nisyanī*, dan sapērti kata di-dalam *Sabab Hayat*, 'Jikalau tiada atas tiga pērkara, sia-sia; ya'ani tiga pērkara; jikalau tiada mu'min, sia-sia bagi-nya shurga; jikalau tiada kafir, sia-sia bagi-nya naraka.'

(23) Pēri pada mēnyatakan hukum sēgala orang yang durhaka akan Raja.

Hukum-nya, di-seksa dēngan tiga ratus ēnam-puluh bagai-nya seksa sa-bilang urat, maka harta-nya di-rampasi, anak istēri-nya jadi hamba Raja. Maka orang itu di-bēri 'adzab sa-lama-lama-nya dēngan sa-ratus ēmpat-puluh dēlapan bilang tulang manusia. Jikalau ia sudah mati, di-bēlah ēmpat, maka di-buangkan ēmpat daksina<sup>45</sup>. Dēmikian lagi barang siapa sharikat dēngan dia. Ada pun barang siapa mēnēngar khabar-nya, maka tiada di-pērsēmbahkan-nya pada Raja, hukum-nya di-kērat lidah-nya dan di-pasak kēdua tēlinga-nya dan di-chungkil kēdua mata-nya, di-buangkan pada tēmpat yang khali. Maka hēndak-lah kamu sakalian, jikalau mēnēngar khabar yang mēmbēri mudlarat akan Raja kamu, sēgēra kamu pērsēmbahkan kapada Raja atau kapada sēgala orang yang karib kapada Raja: jikalau khabar itu tiada bērtēntu sa-kali pun kapada Raja, tiada akan mēmbēri mudlarat atas diri kamu.

*Wa-qad qurinati<sup>46</sup> 'l-risālatu'l-mu'allafatu bi-ta'rikh sanati alfa wa-arba'a min hijrati'l-nabiyyah 'l-mustafa 'alā zuhūri 'l-shar'i'at<sup>46</sup>, afdal al-salāt wa'l-mulk wa'l-tahiyyat 'alā sahibina wahiya min sanati 'l-za'ra tis'a wa-'ishrīna yauman min shahri 'l-Muharram, min ta'lifi'l-Sultani'l-'adil al-bāsil al-kamil 'Abd al-Ghafur Muhiyyū'd-dīn Shah Khalifat buldan.*

(24) Pēri mēnyatakan sharat di-dalam pērniagaan. *Bab fi targhib kasbi 'l-halāl wa'l-targhib 'an kasbi'l-harām.* Bab pada

mēnyatakan yang mēnggēmari pēncharian yang halal dan mēnakutkan atas pēncharian yang haram: *qāla'llāhu ta'āla' wa'ahalla'llāhu 'l-bay'a wa harrama'l-ribā*, ya'ani halalkan Allah ta'āla bērniaga dan haramkan Allah ta'āla makan riba ia-itu ganda-bērganda.

Bērmula tiada sah bērniaga ēmas dēngan ēmas dan perak dēngan perak mēlainkan suatu jēnis yang lain, dēngan suatu jēnis yang lain ya'ani ēmas dēngan suatu jēnis yang lain ya'ani perak tunai, dan bērniaga makanan sama makanan janji.

(25) (a) Pēri pada mēnyatakan hukum bērjual rumah, masok di-dalam bērniaga itu yang bērtēmu dēngan rumah itu, tiada masok sēgala yang dapat di-chēraikan-nya daripada rumah itu.

(b) Bērmula apabila bērjual bumi, masok sēgala kayu-kayuan di-dalam bumi itu, mēlainkan huma akan yang bērjual, jika tiada di-sēbutkan; jika ada yang di-kētam bērulang-ulang sapērti lada, pērtama di-kētam-nya akan yang bērjual, kēmudian buah-nya akan orang yang mēmbēli. Jika ada di-dalam bumi itu pohon kayu yang bērbuah, tiada di-sēbutkan-nya buah-nya, jika bērputek tatkala bērniaga itu, akan yang bērjual; jika bēlum bērputek tatkala bērniaga itu, akan yang mēmbēli.

(26) Pēri mēnyatakan hukum mēngēmbalikan bēnda yang di-bēli sēbab 'aib-nya.

Apa-bila mēmbēli suatu bēnda maka kēlihatan atas bēnda itu 'aib yang sēdia, maka di-kēmbalikan-nya. Jika lambat mēngēmbalikan bēnda itu dēngan tiada 'udzor, tiada-lah harus di-kēmbalikan-nya. Apa-bila di-lihat, di-kēmbalikan. Apabila bēnda itu di-kēmbalikan, sēgala yang tahu-nya di-pērchari-nya<sup>47</sup> sapērti *تاح مفوج ميرت* <sup>48</sup> mēngikut, tiada harus di-pinta-pinta-nya oleh tuan-nya yang mēnēbus, "Oleh aku mēngajar dia mari, akan aku hak-nya itu."

Jika hamba pērēmpuan di-tēbus-nya bunting, pada yang mēnēbus bēranak, anak-nya itu akan orang mēnēbus, tiada kēmbali dēngan ibu-nya.

Bērmula bērapa bagai 'aib yang harus di-kēmbalikan: pērtama, hamba itu pēlari dan pērmukah dan pēnchuri dan gila dan busong dan burut dan buta larangan dan tuli dan sopak dan kēlu atau hamba itu bērsuami,<sup>49</sup> atau 'aib yang tērbunyi kēmudian kēlihatan, bērapa lama-nya pun, dapat di-kēmbalikan.

Bērmula jikalau di-bēli-nya suatu bēnda, sampai pada tangan-nya yang mēmbēli itu bērchēla bēnda itu, chēla-nya sēdia pun ada, tiada dapat di-kēmbalikan mēlainkan di-harga bēnda itu dēngan

tiada 'aib sa-ratus, harga-nya delapan-puluh,—jika retha yang berjual benda itu; jikalau tiada, di-kembalikan benda itu dengan sa-puluh tampang timah-nya serta-nya; jika benda itu tiada di-kembalikan, sa-puluh tampang timah di-kurangkan sebab chela-nya itu. Apabila bersalahan yang berjual dan yang membeli akan 'aib yang sedia, orang berjual itu bersumpah: apabila bersalahan akan kadar harga-nya benda itu atau akan kadar benda itu, kedua-nya bersumpah, di-binasakan berniaga.

(27) Péri menyatakan hukum segala yang harus di-sandar. Segala yang harus di-perniagakan, harus di-sandarkan di-dalam utang. Apa-bila ada utang itu, sandar harus akan utang itu. Bermula tiada menyileh yang memegang sandar itu jika hilang benda yang tersandar itu dengan tiada taksir-nya, kerana orang yang memegang sandar itu seperti orang menaruh amanat: jika dengan taksir-nya, menyileh. Apabila membayar sa-tengah utang-nya orang yang bersandar itu, tiada harus keluar benda yang di-sandarkan-nya daripada tangan yang memegang sandar itu; melainkan jika membayar sakalian utang-nya, maka benda itu harus di-ambil-nya daripada tangan yang memegang sandar itu. Apabila tiada mau orang yang bersandar mengambil sandar-nya tatkala sampai janji-nya, di-jualkan oleh hakim akan membayar utang-nya.

Bermula péri orang muflisi (barang siapa banyak utang-nya daripada harta-nya):

Maka di-pinta-nya-lah oleh segala orang yang mempunyai harta pada orang muflisi itu daripada melakukan kehendak-nya di-dalam harta-nya, maka di-tahan hakim muflisi itu melakukan kehendak-nya di-dalam harta-nya. Apa-bila ada orang daripada mempunyai mendapat 'ain benda itu di-dalam harta muflisi itu bagai ia mengambil harta-nya, jika ia hendak, di-binasakan-nya berniaga-nya di-ambil-nya benda-nya. Jika di-dapati-nya sa-tengah harta-nya yang tinggal, di-ambil-nya dua rakan sa-kali; yang baki dengan mempunyai harta-nya yang lain. Kemudian daripada itu di-tahan hakim tiada berlaku segala kelakuan-nya di-dalam harta-nya dan tiada sah ia memerdehekakan harta-nya. Bermula kanak-kanak orang gila dan yang tiada berlaku kelakuan-nya di-dalam harta-nya sahingga lepas daripada jalan-nya.

(28) Péri menyatakan hukum sah sileh kemudian daripada ikral. Di-dalam segala harta tiada sah sileh di-dalam munkir dan pada yang tiada berharta.

Bermula yang sah itu atas enam bagai: pertama, seperti hukum berniaga; kedua, seperti hukum berniaga emas dengan emas; ketiga seperti hukum yang memberi; keempat, seperti hukum melepaskan; kelima, seperti hukum meminjam; keenam, seperti hukum upahan.

Yang pertama: sa-orang orang menuntut rumah pada tangan sa-orang orang, maka ikral ia akan rumah itu, maka di-silehkan rumah itu atas sa-ratus timah; hukum sileh itu saperti hukum bēniaga, dapat mēmbēli jika hēndak di-turut-nya pada kētika itu atau bērjanji tiga hari. Yang kēdua bagai: jika mēnuntut sa-orang laki-laki sa-ratus dinar ēmas, maka ikral ia, maka di-silehkan dēngan sa-ribu dērham perak, saperti hukum bērniaga ēmas perak hukum-nya. Kētiga bagai: jika di-silehkan dēngan lima-puluh dinar ēmas, ada-lah hukum-nya saperti mēlēpaskan sa-tēngah-nya. Kēempat bagai: jika sa-orang laki-laki mēnuntut rumah atau kampong, maka ikral ia akan tuntutan-nya di-sahkan bahawa akan di-diami-nya sa-tahun, ada-lah hukum-nya saperti di-pinjam-nya. Kēlima: jika sa-orang laki-laki mēnuntut rumah atau kampong, maka ikral ia, maka di-silehkan atas sa-tēngah-nya ada-lah atas pēmbērian-nya, tiada-lah sah sileh, mēlainkan pertama hēndak bērtuntutan.

(29) Pēri mēnyatakan hukum mēngakuī utang orang lain. Apa-bila di-kētahuī-nya oleh yang mēngaku bagai-nya dan kadar tunai atau bērtanggoh bēnda yang di-akukan-nya itu, tiada sah orang mēngakukan mēlainkan yang bērlaku kēlakuan-nya di-dalam shara<sup>50</sup>.

Bērmula bagai: ēmpunya ēmas itu mēnuntut ēmas itu kapada yang mēngakukan dia, dan apa-bila dēngan pēnyuroh yang bēr-utang mēmbayar dia di-bayari-nya utang-nya, kēmudian di-pinta-nya pēmbayar-nya pada yang di-akuī-nya; jika mēngaku tiada dēngan pēnyuroh mēmbayar dēngan pēnyuroh-nya, tiada harus di-pintai kapada-nya, hukum-nya saperti di-bēri-nya. Tiada harus mēngaku ēmas daripada perak.

(30) Pēri mēnyatakan hukum harus mēngakukan tunai daripada bērtanggoh dan bērtanggoh daripada tunai. Tiada harus harta yang sarikat daripada sarikat-nya, dan tiada harus mēngaku tērima esok dan saperti suatu tuntutan bēlum di-thabit dan tiada harus di-akuī. Bērmula tiada harus mēngakuī tuboh orang dēngan pēsuroh yang di-akuī: jika mati yang mēngaku akan itu atau yang di-akukan, binasa akuan itu.

(31) Pēri pada mēnyatakan hukum bērjual tiada dapat dari-pada yang mēnjualkan itu; kata-nya, "Ku-jualkan ēngkau": kata yang mēmbēli, "Ku-tērima-lah jua", tiada sharat razi yang di-jualkan atas-nya, bahawa harus utang-nya yang thabit atas-nya; saperti lēpas yang mēnjualkan, jikalau mati yang di-jualkan atau lari atau munkir. Tiada harus jual perak dēngan ēmas: tiada harus yang tunai dēngan bērjanji.

(32) Pēri mēnyatakan hukum pinjam.

† Tiada harus meminjam, tiada yang mengambil guna dengan dia : hendak kekal ada benda itu ; tiada harus meminjam bunga karna tiada kekal, ada-nya. † <sup>51</sup> Tiada harus yang meminjam tiada mengembalikan benda yang di-pinjam-nya pada tempat yang di-pinjam-nya.

Bermula yang meminjam itu, mati atau binasa benda yang di-pinjam-nya, jika tiada dengan taksir-nya sa-kali pun, † menyileh juga yang meminjam ; jika janji-nya tiada mati sa-kali pun. † <sup>52</sup>

Bermula yang benda di-pinjam itu di-béri-nya, suatu pun tiada menyileh yang meminjam, jika tatkala di-pakai-nya benda itu tiada dengan taksir-nya.

Bermula jika sa-orang laki-laki menyuruhkan sa-orang kapada suatu tempat akan pekerjaan, di-béri kenderaan akan menaikkan-nya, maka mati atau binasa-lah kenderaan itu, tiada menyileh.

(33) Péri pada menyatakan hukum membéri utang. Bahawa berkata yang membéri emas kapada yang di-suruh-nya, "Ambil-lah oleh-mu dinar emas atau dinar perak perniagakan harta itu, † laba-nya akan kita ; akan engkau sa-kian laba-nya". Hendak dituntutkan-nya perniagakan harta itu. † <sup>53</sup> tiada harus di-tentukan-nya d.r.san.<sup>54</sup> dan tiada menyileh yang berniaga itu, jika binasa harta itu tiada dengan taksir-nya. Bermula tiada harus janji-nya akan membayar utang itu di-benua<sup>55</sup> yang lain atau lebih membayar daripada asal-nya : jika mengutang tiada dengan berjanji kemudian di-bayar-nya lebih, tiada mengapa.

(34) Péri menyatakan hukum bertaruh amanat pada sa-orang orang.

Jika di-terima-nya, hendak-lah di-pelihara-nya amanat itu, pada tempat itu memelihara-nya. Bermula barang siapa merampas segala yang tiada harus di-perniagakan-nya, jika binasa benda itu pada tangan yang merampas itu, suatu pun (tiada A) atas-nya ; merampas hamba orang harga-nya dua-ratus ; maka kemudian sakit hamba orang itu, kembali harga-nya sa-ratus ; maka kemudian hendak di-kembalikan hamba itu dengan sa-ratus timah serta-nya harga-nya yang timbul.<sup>56</sup>

(35) Péri menyatakan hukum benda sa-kutu bumi dan segala perbuahan, dan segala pohon kayu mengikut bumi itu.

Bermula apa-bila di-jual-nya oleh sa-orang daripada dua itu benda yang sa-kutu itu kapada orang lain, di-beli-nya oleh (?-nya) yang sa-kutu seperti yang di-jual-nya ; tiada harus di-jual-nya pada orang lain ; jika bersalahan pada kadar-nya benda itu atau pada

harga-nya, maka yang lain membeli bersumpah. Jika terlambat di-tuntut-nya daripada-nya melainkan uzor-nya, binasa hukum benda yang sa-kutu itu. Bermula jika di-jual-nya oleh sa-orang daripada yang sa-kutu itu segala yang sa-kutu itu, lain berkenan akan dia melainkan sa-orang tiada berkenan akan berjual benda itu, di-ambil-nya sakalian benda itu atau di-tinggalkan-nya oleh sa-orang yang tiada berkenan itu.

(36) Përi pada menyatakan segala hukum upahan di-dalam pekerjaan seperti utasan atau bermasak atau perbuatan yang tentu atau berhari atau berbulan dengan di-tentukan upah-nya.

Barang binasa di-dalam tangan upahan itu dengan tiada taksir-nya tiada ia menyileh.

Bermula tiada harus mengambil upahan orang yang berténun kain dengan janji, jika sudah kain yang di-ténun itu dengan sa-bahagi harga-nya, tetapi hendak sudah itu, betapa adat upahan di-bayar.

(37) Bab përi menyatakan hukum orang yang menyewa rumah. Binasa sewa<sup>57</sup> dengan binasa rumah<sup>58</sup> itu. Maka orang yang menyewa itu, menyileh; jika ia hendak, di-binasakan-nya janji-nya minta di-kembalikan sewa yang lagi. Umpama, sa-orang orang menyewa rumah, janji-nya sa-puloh bulan sa-ratus timah; di-diami-nya sa-bulan, rumah itu runtoh binasa; kira-kira akan sa-bulan, sembilan-puloh ia minta di-kembalikan. Jika ia berkenan akan diam pada rumah itu, di-suroh-nya perbaiki; suatu pun tiada di-pinta-nya, jikalau sewa-nya sudah di-bëri-nya dahulu; jika belum di-bëri-nya, betapa kehendak-nya; jika ia enggan di-bëri sewa-nya yang lagi kapada-nya, di-binasakan janji-nya: jika ia hendak diam pada tempat itu, di-suroh-nya perbaiki, di-bëri-nya sewa-nya<sup>59</sup> yang lagi pada-nya.

(38) Përi pada menyatakan hukum segala orang yang sewa akan tanah.

Apa-bila di-bëri-nya oleh orang laki-laki tanah pada sa-orang di-suroh-nya berhuma, janji-nya suku daripada tanah itu di-per-huma-nya akan upah-nya, tiada harus. Jika di-sewakan-nya dengan emas atau perak atau makanan di-tentukan-nya, harus itu.

(39) Bab përi hukum mëndirus tanaman pada pohon kayu, sa-kian lama-nya mëndirus tanaman, sa-kian daripada buah-nya akan orang yang mëndirus dia. Jika ada bumi itu di-dalam tanaman akan perhumaan masok di-dalam-nya beneh-nya daripada empunya tanah, di-bëri-nya upah-nya akan orang yang mëndirus dia.



(40) Përi pada mënnyatakan hukum ikral dua përkara:—përtama, pada hak Allah ta'āla sapërti mēminjam dan zina; kēdua, pada hak manusia. Yang pada hak shara' di-kabulkan, jika ia kēmbali daripada ikral-nya; bērmula pada manusia tiada harus di-kabulkan, jika ia kēmbali daripada ikral. Bērmula tiada sah ikral mēlainkan dēngan tiga përkara: përtama-tama, kanak-kanak bēlum baligh tiada sah ikral-nya; kēdua përkara, tiada sah ikral orang gila; kētiga përkara, hēndak-lah dēngan kēhēndak-nya, tiada sah ikral dēngan di-gagahi.

Bērmula jika ikral pada harta, dēmikian hēndak ikral-nya; harta itu si-anu ēmpunya dia; jika ikral-nya tiada bērtētuan, di-tanyakan kēnyataan.<sup>60</sup>

Bērmula sama hukum ikral pada hal sihat dan sakit. Ada-nya.

(41) Përi mënnyatakan hukum mēnēbas rimba yang tiada di-përhumai orang mēlainkan milek orang.

Di-përjanji bahawa ada-lah yang mēnēbas itu Islam; kēdua, bumi itu jangan di-milek orang, apa-bila di-tēbas,—barang yang ada dalam-nya akan yang mēnēbas dia.

Bērmula jika ada serokan ayer di-dalam bumi itu, yang lēbeh daripada hajat-nya akan mēndirus huma tanaman-nya, akan di-minum-nya dan minum binatang, jangan di-larangkan + di-bahagi-nya +<sup>61</sup> orang yang di-hilir-nya itu. Ada-nya.

(42) Përi pada mënnyatakan hukum mēmberi.

Barang yang tiada harus di-përniagakan, tiada harus di-bëri-kan. Tiada sah mēmberi mēlainkan yang bër laku këlakuan-nya dalam tiada thabit (tētap A) bëri-nya mēlainkan dēngan di-tërima-nya oleh yang di-bëri dēngan pēnyuroh yang mēmberi kē-tika di-bëri.

Bērmula jika bapa dan ninek-nya mēngambil pēmberian daripada anak chuchu-nya, dapat, sa-lama ada bēnda yang di-bëri-nya pada tangan yang di-bëri-nya; jika bër tukar bēnda itu, tiada dapat di-ambil-nya oleh bapa-nya dan ninek-nya, sapërti di-chua-nya, oleh anak chuchu di-tēbuskan-nya, lain tiada dapat, dan lain mēng-ambil pēmberian itu. Bērmula jika di-bëri-nya oleh bapa anak-nya sa-orang hamba pērēmpuan bunting, hamba itu di-dalam ta-ngan anak-nya maka bēranak, (? anak) hamba itu akan anak yang di-bëri itu, tiada<sup>62</sup> kēmbali dēngan ibu-nya.

Bērmula sunat mēnyamakan pēmberian antara sēgala anak, laki-laki dan pērēmpuan.

Bermula sunat bërbalas-balasan di-dalam pëmbërian.

Bërmula përi wakaf hërti-nya sapërti tanaman atau bëndà tiada di-këluarkan daripada milek-nya, bëndà yang bërguna dan këkal, harus wakaf anak chuchu-nya yang ada dan yang akan datang bërsama anak chuchu-nya itu mëmakan dia, + tiada harus antara sëmua-nya sa-orang mëngambil dia akan milek-nya; bërmula di-wakafkan-nya akan sëgala fakir mëmakan dia. +<sup>63</sup>

(43) Përi pada mënnyatakan hukum mëndapat sëgala orang yang lari.

Maka barang siapa mëndapat dia orang lari atau mëndapat bëndà hilang, janji-nya "Barang siapa mëndapat, sa-kian upah-nya ku-bëri". Barang siapa mëndapat dia, bëtapa janji-nya di-bëri-nya. Jika kata-nya, "Jika si-.....<sup>64</sup> mëndapat dia, tiga tampang ku-bëri; jika si-Omar mëndapat dia, ënam tampang ku-bëri; jika si-Ahmad mëndapat dia, sëmbilan tampang ku-bëri". Jika salah sa-orang mëndapat dia, bëtapa janji-nya di-bëri. Jikalau këtiga-nya mëndapat dia, sama-sama di-bahagikan tiga yang janji-nya itu, sa-bahagi di-suroh-nya bëri. Jika barang siapa mëndapat dia tiada dëngan janji, bëtapa 'adat nëgëri itu di-suroh bëri.

(44) Përi pada mënnyatakan hukum mëndapat suatu bëndà pada jalan atau pada hutan atau pada masjid.

Maka yang mëndapat itu mëngambil dia, di-mashurkan-nya dëngan tanda-nya dan rupa-nya bëndà itu, banyak-nya sadikit-nya, di-suratkan-nya dan di-saksikan-nya di-warwarkan-nya di-mashurkan-nya sa-tahun. Jika datang yang ëmpunya bëndà itu, di-adakan saksi-nya, di-pulangkan-nya kapada ëmpunya dia. Ada pun jika di-përmainkan-nya oleh sa-orang di-katakan-nya dia ëmpunya, dia tiada saksi-nya, bëtapa sapërti kata-nya itu? Ada-kah harus di-bërikan kapada-nya? Tiada wajib. Jika tiada ëmpunya mënuntut dia, jika hëndak yang mëndapat, bëndà itu di-jadikan-nya milek-nya kapada hati-nya; jika ada ëmpunya bëndà itu, di-sileh-nya. Jika ia hëndak, di-jadikan-nya sapërti amanat, tiada dia mënyleh, jika hilang bëndà itu tiada dëngan taksir-nya: jika dëngan taksir-nya, itu pun tiada ia mënyleh, jika di-dalam sa-tahun tatkala di-mashurkan-nya itu. Bërmula tiada di-mashurkan-nya jika mëndapat unta atau lëmbu atau kijang atau kaldai pada padang, mëlainkan di-pëliharakan: jika datang yang ëmpunya, di-pulangkan. Jika mëndapat kambing pada padang, jika hëndak yang mëndapat itu, di-mashurkan-nya di-jadikan-nya milek-nya: jika hëndak di-jual-nya, harga-nya di-jadikan-nya milek-nya: jika hëndak di-makan-nya këmudian daripada di-mashurkan-nya, di-sileh-nya harga-nya, jika ada ëmpunya.

Bërmula barang siapa mëndapat suatu bëndà, maka tiada di-ambil-nya di-hantarkan-nya pada tëmpat di-dapati-nya itu jua,

jika hilang, maka hendak-lah ia menyileh harga-nya oleh tiada mengambil memeliharaakan dia.

Bermula tiada menjadi milek benda yang di-dapat di-dalam masjid Mekkah dan hamba perempuan yang tiada halal pada yang mendapat.

(45) Përi pada menyatakan hukum mendapat kanak-kanak kecil, hendak-lah di-ambil-nya dan di-peliharaakan-nya. Jika ada serta-nya harta, di-bërikan-nya akan makanan-nya dengan penyuruh hakim; jika tiada harta serta-nya dan tiada orang berbuat karna Allah memberi makan, di-bëri makanan daripada baitu'l-mal. Jika ia mati, apa-bila ada harta-nya, yang mendapat dia itu beroleh pësaka harta-nya itu. Akan baitu'l-mal, hendak-lah orang mendapat itu Islam merdëheka, 'akil baligh, 'adil.

Bermula orang kaya utama daripada orang kasehan memëliharakan dia, jika mendapat dia sama kasehan dan kaya orang itu; isi dusun itu, utama daripada orang utan memëliharakan dia.

Bermula jika ada orang menuntut dia mengatakan anak-nya, Islam dan kafir, hamba dan merdëheka, di-dalam tuntutan-nya sama.

Bermula jika di-dapati-nya di-dalam nëgëri Islam, Islamkan-nya Islam; jika di-dapati-nya di-nëgëri kafir, di-dalam nëgëri itu Islam ada, di-hukumkan-nya hukum Islam; merdëheka, jika baligh ia ikrarkan hamba orang, di-kabulkan ikral-nya itu, jangan ada dahulu ikral-nya akan diri-nya merdëheka.

(46) Bab përi hukum apa-bila sa-orang 'akil baligh membunoh sa-orang orang Islam, di-sahaja-nya di-bunoh-nya itu, laki-laki atau perempuan, kecil atau besar, maka yang membunoh itu di-bunoh.

Bermula tiada harus Islam di-bunoh oleh (? membunoh) kafir. Bermula tiada harus merdëheka di-bunoh oleh membunoh hamba orang.

Bermula tiada harus bapa di-bunoh oleh membunoh anak-nya.

Bermula (tiada A) di-kisaskan antara hamba Islam dan merdëheka kafir. Dëmi bermula, jika Yahudi membunoh Nasrani atau kafir Majusi, maka atas di-bunoh tiada di-tahani bunoh-nya, jika ia masuk Islam pun.

Bermula apa-bila sa-orang membunoh jama'at, di-bunoh<sup>65</sup> yang dahulu di-bunoh-nya; jika sëgala yang kemudian di-bunoh-nya itu, benda kepada dia.

Běrmula jika yang mēmbunoh tiada kětahuan pěrtama yang di-bunoh-nya + <sup>66</sup>.....

Běrmula pada tēmpat di-kisaskan pada sēgala anggota; apabila tiada di-kisaskan pada nyawa, tiada di-kisaskan pada anggota-nya.

Běrmula mēmbunoh dan mēnēntukan dan mēngharamkan<sup>67</sup> di-bunoh sapěrti itu, jika mati dēngan itu; jika tiada mati dēngan itu, di-bunoh-nya dēngan sēnjata.

Běrmula jika sa-orang mēmēnggal kēdua tangan sa-orang orang, maka mati ia dēngan pēnggal itu, maka kēluarga yang tēr-bunoh itu, jika hēndak dia, di-bunoh-nya; jika tiada, di-pēnggal-nya tangan-nya kēdua; jika hēndak ia ampun-nya dēngan dēnda atau di-ampuni-nya tiada dēngan dēnda, dapat, hukum-nya.

(47) Pěri pada mēnyatakan hukum kisas pada sēgala anggota, tětapi tiada harus di-potong kanan dēngan kiri, yang bēnar dēngan chēnangga, tiada kēlingking dēngan jari manis, tiada gigi kēchil dēngan gigi bēsar; jika redla kēdua-nya sa-kali pun, (tiada ?) di-pēnggal tangan-nya chēnangga dēngan yang bēnar; jika bērkēnan yang di-lukai, jika di-puntong oleh tangan yang bērjari, tiada di-puntong; jika tangan yang tiada bērjari mēmuntong tangan yang bērjari di-puntong, di-ambil dēnda jari pula.

Běrmula tiada di-kisas tatkala luka tuboh mēlainkan luka yang datang pada tulang itu.

(48) Pěri pada mēnyatakan hukum dēnda.

Běrmula dēnda itu dua bagai. Pěrtama dēnda itu di-bēsarkan, kēdua dēnda di-kēchilkan.

Maka dēnda yang di-pěrbēsar itu sa-ratus daripada unta: tiga puloh unta bětina tiga tahun usia-nya; tiga-puloh unta ēmpat tahun usia-nya; ēmpat-puloh unta bunting.

Běrmula dēnda yang di-pěrkēchil itu sa-ratus daripada unta: dua-puloh unta, ēmpat tahun usia-nya; dua-puloh unta bětina, tiga tahun usia-nya: dua-puloh unta, sa-tahun usia-nya; (... unta) jantan dua tahun usia-nya. Jika tiada unta, harga-nya unta, kata sa-tēngah kaul sa-ribu dinar ēmas akan ganti-nya unta.

Běrmula dēnda pērēmpuan sa-tēngah daripada dēnda laki-laki.

Běrmula dēnda Nasrani dan Yahudi tiga bahagi, sa-bahagi daripada dēnda Islam.

Běrmula děnda kafir yang lain sa-puloh ěmas daripada děnda Islam.

Akan dua tangan, sěmpurna děnda sa-ratus unta; akan dua kaki sěmpurna děnda, akan hidong sěmpurna děnda, akan dua tělinga sěmpurna děnda, akan dua mata sěmpurna děnda, akan ěmpat kělopak mata sěmpurna děnda, akan dua bibir sěmpurna děnda. Běrmula akan hilang pěnglihat mata-nya atau hilang kata-nya měnjadi bisu atau hilang pěněnggar-nya atau hilang budi-nya atau hilang pěnchium-nya sakalian, sěmpurna děnda sa-ratus unta; akan puntong f.rus-nya (=faraj-nya) atau buah-nya itu pun sěmpurna děnda.

Běrmula akan suku gigi, lima ekor unta.

Běrmula sěgala anggota yang tiada běrguna, děngan kira-kira hakim.

Běrmula děnda anak dalam pěrut ibu-nya itu sa-puloh ěmas daripada děnda ibu-nya.

Běrmula kěfarat měmbunoh orang měrděhekakan<sup>68</sup> sa-orang sahaya yang tiada běrjalla Islam.

(49) Pěri pada měnyatakan hukum zinah ia-itu dua pěr-kara.

Pěrtama zinah muhsin nama-nya, laki-laki atau pěrěmpuan yang sudah běrsuami děngan nikah yang sah. Dan tiada muhsin, laki-laki bělum běristeri pěrěmpuan bělum běrsuami ia-itu laki-laki atau pěrěmpuan yang bělum měrasai nikah. Běrmula yang muhsin itu hukum-nya di-rějam di-lontar děngan batu + dan di-tanamkan hingga pinggang dan pada suatu riwayat hingga leher. Sabda Nabi salla 'llāhu 'alaihi wa-salam: *Lā yadhkulu 'l-jannata waladu 'z-zinā*, hěrti-nya tiada masok shurga anak zina. +<sup>69</sup>

Běrmula yang tiada muhsin itu, hukum-nya di-palu sa-ratus, maka di-buangkan daripada něgěri itu sa-tahun lama-nya.

Běrmula yang muhsin itu ěmpat pěr-kara: pěrtama Islam dan běr-budi, tiada gila.

Běrmula hamba laki-laki dan hamba pěrěmpuan itu had-nya sa-těngah daripada měrděheka, lima-puloh palu-nya.

(50) Běrmula hukum liwat dan měnyěrtai binatang sapěrti hukum zinah jua.

Běrmula jika tiada běrsa-tuboh děngan dia sa-hingga pělok chium sahaja, di-ta'azizkan oleh hakim, jangan sampai kapada sa-kurang-kurang had ia-itu dua-puloh.

Běrmula di-hukumkan hakim zinah děngan ikral atau děngan ěmpat orang saksi laki-laki mělihat orang itu zinah sapěrti cholak-chělak<sup>70</sup> masok di-pěrhadkan.<sup>71</sup>

Běrmula jika dua orang saksi běrkata, "Kami mělihat dia zinah pada suatu pěnjuru," tiada thabit, hukum zinah hěndak sa-kata ěmpat orang saksi itu, maka thabit-lah atas-nya hukum zinah.

(51) Pěri pada měnyatakan hukum měmaki orang haram zadh.

Běrmula sa-orang orang měmaki sa-orang děngan zinah, maka munkir yang běrmaki itu, tiada ada saksi, maka di-palu dělapan-puloh palu orang yang měmaki itu.

Běrmula jika ia běrmaki itu 'abdi orang, di-palu ěmpat-puloh palu.

Běrmula apa-bila měmaki hamba orang atau kafir, had akan orang yang měmaki itu, hěndak-lah di-ta'azizkan.

Běrmula tiada ada had'kan jika bapa měmaki anak-nya.

Běrmula akan orang yang měmaki, hěndak tiga janji: suatu baligh dan běrbudi, tiada gila dan jangan ada bapa yang běrmaki.

Běrmula yang di-pěrmaki itu hěndak-lah ada lima janji: pěrtama ada Islam, kědua baligh, kětiga běrbudi, kěěmpat muhsin,<sup>72</sup> kělima tiada pě(r)nah di-kata orang zinah pada-nya.

(52) Pěri pada měnyatakan hukum orang yang minum arak atau tuak atau sěgala yang měmabokkan.

Hukum-nya ěmpat-puloh di-palu, jika mōrděheka; dua-puloh jika hamba orang. Běrmula di-hadkan děngan dua pěrkara, suatu děngan ikral, suatu děngan dua orang saksi laki-laki; tiada děngan di-hadkan děngan di-chium bau arak atau tuak mulut-nya.

(53) Pěri měnyatakan hukum orang měnchuri harta orang. Maka hukum-nya di-potong<sup>73</sup> tangan orang yang měnchuri itu děngan běběrapa janji: pěrtama bahawa ada baligh, tiada di-potong kanak-kanak; kědua, hěndak-lah ada běrbudi, tiada di-potong orang gila; kětiga, hěndak-lah ada běnda yang di-churi-nya itu sa-ěmas tiga kupang harga-nya; kěěmpat, hěndak-lah ada di-churi-nya itu daripada těmpat běnda yang di-dalam pělihara-nya; tiada di-potong,

jika mēnchuri benda yang bukan tēmpat-nya di-taroh-nya; kēlima, jangan benda itu sa-rupa dēngan benda-nya.

Bērmula di-potong tangan-nya kanan daripada pērgēlangan tangan-nya; jika lagi mēnchuri. di-pangkal kaki-nya kiri; dan jika lagi ia mēnchuri. di-potong tangan-nya kiri; jika lagi ia mēnchuri, di-ta'azizkan ia, hukum-nya.

(54) Pēri mēnyatakan hukum orang mēnyamun orang. Bērmula orang mēnyamun itu atas ēmpat bahagi.

Jika mēmbunoh tiada mēngambil harta, di-bunoh jua hukum-nya.

Bērmula jika mēmbunoh dan mēngambil harta-nya, di-bunoh had dan di-sulakan tiga hari.

Bērmula mēngambil harta tiada mēmbunoh, di-potong tangan-nya (dan kaki-nya B); jika bērtakut juga, ia-nya tiada mēmbunoh, sa-hingga di-ta'azizkan juga; jika tērbunoh ia dahulu daripada di-tangkap, lēpas daripada-nya, maka di-ambil hak orang daripada-nya.

(55) Pēri pada mēnyatakan hukum sa-orang, apa-bila datang hēndak mēmbunoh atau hēndak mēngambil harta atau hēndak nakali pada<sup>74</sup> isi rumah-nya, jika tērbunoh di-dalam mēngēluarkan dia, tiada salah orang yang mēmbunoh itu.

(56) Apa-bila di-bawa-nya binatang sērta-nya, binatang itu di-naiki-nya atau di-halaukan-nya atau di-tarek-nya, di-sileh-nya benda orang yang binasa itu.

Bērmula jika binatang itu tiada orang sērta-nya, pada malam, mēnyileh; jika pada siang, tiada mēnyileh huma atau tanaman.

Bērmula jika taksir ēmpunya binatang pada mēmēliharakan binatang itu, mēnyileh ia; tiada ia mēnyileh, jika ada huma itu bērpagar, pintu pagar-nya tiada di-katup-nya, taksir-lah yang ēmpunya huma.

Bērmula apa-bila ada sa-orang mēnaroh kuching, maka di-makan-nya anak ayam orang ēmpunya rumah, jika pada malam, mēnyileh yang ēmpunya kuching; jika pada siang, tiada mēnyileh. Apa-bila di-kētahui kuching itu makan binatang, bērmula jika bērhimpun mērpati sa-orang yang lain, antara itu anak-nya bagi yang ēmpunya binatang.

(57) Pēri pada mēnyatakan hukum orang yang durhaka pada Raja-Raja yang 'adil.



Di-nyatakan durhaka-nya mēninggalkan diri-nya pada suatu tempat, di-pērbuat-nya kota. Maka di-panggil di-suroh bērbuat kēbaktian. Jika mēnurut, dia di-ampuni; jika tiada ia mēnurut, hēndak mēlawan sērang, di-lawan bērpērang. Jika ia kēmbali hēndak bērbuat kēbaktian pada Raja itu, di-ampuni.

Bērmula tiada harus di-bunoh mēreka itu sēgala yang tiada mēlawan mēreka itu dan tiada harus di-tawan jangan di-tambahi luka mēreka itu dan jangan di-rampas harta-nya sēgala mēreka itu.

(58) Bērmula mēreka yang tiada mahu mēmbēri zakat atau sēgala hak Allah ta'āla atas-nya tiada di-bēri-nya, jika ia hēndak bērpērang mēngērasi diri-nya, kita kērasi dēngan pērang, barang binasa daripada harta-nya atau mati di-dalam pērang, barang binasa tiada mēnyileh. Jika ia mēnurut kata, pada hal itu binasa harta-nya, hēndak-lah di-sileh.

Barang siapa di-bēlikan makanan, datang orang yang kēlapan, pada kētika itu hēndak-lah di-bēri-nya. Jika di-bēli-nya, maka tiada ada pēmbēli-nya, di-bēri-nya.

Bērmula jika ia tiada mahu mēmbēri, maka di-runtun-nya oleh orang yang lapar itu di-kērasi-nya atau bērbunohan antara-nya; jika datang + kapada ajal + <sup>75</sup> nyawa-nya, tiada-lah salah orang kēlapan itu. Ada-nya.

(59) Pēri hukum sēgala orang yang murtad.

Apa-bila sa-orang Islam murtad, di-suroh taubat tiga kali; jika tiada ia mahu taubat, di-bunoh-nya, hukum-nya, jangan di-mandikan dan jangan di-sēmbahyangkan dan jangan di-tanamkan pada kubor Islam.

(60) Pēri pada mēnyatakan hukum orang sēmbahyang, atas dua pērkara: (1) mēninggalkan dan tiada i'tikad-nya pada fardlu sēmbahyang, (2) di-dalam i'tikad-nya bahawa sēmbahyang fardlu. Di-suroh sēmbahyang; jika ia tiada sēmbahyang oleh kēsakitan, tiada ia munkir. Di-suroh taubat sapērti mēnyuroh orang yang murtad itu juga tiga kali; jika sēmbahyang, baik pada hal-nya itu; jika tiada dia mahu sēmbahyang, di-bunoh hukum-nya, tētapi hukum-nya sapērti hukum Islam, mayat-nya dan harta-nya tiada harus di-binasakan dan di-tanamkan pada kubor Islam, + sapērti sabda Nabi salla 'llahu 'alaihi wa's-salam: *Man taraka 's-salāta kafara*, hērti-nya barang siapa mēninggalkan sēmbahyang dēngan sahaja-nya, maka hampir-lah ia pada kafir; maka jika tiga kali bērturut-turut jadi kufur + <sup>76</sup>

(61) Hukum pērang sabil dēngan janji hēndak-nya ada tujuh sharat:—

Pertama, Islam, kedua, baligh; ketiga, berbudi; keempat, laki-laki; kelima, sihat; keenam, berani; ketujuh, keras akan berperang.

Bermula apa-bila kafir di-tawan, hukum-nya dua perkara: sa-perkara, menjadi hamba dengan tawan itu segala kanak-kanak dan segala perempuan; sa-perkara, tiada jadi hamba dengan tawan itu segala laki-laki yang baligh. Bermula Raja memilih antara mereka itu di-dalam empat perkara-nya: di-bunuh atau di-perhamba atau di-lépaskan atau di-pintaï harta, di-lépaskan; yang kebajikan di-pekerjakan barang siapa Islam dahulu daripada tertawan, terpelihara harta-nya dan segala anak-nya yang belum baligh. Di-hukumkan kanak-kanak hukum Islam dengan tiga syarat: pertama, jika ada ibu bapa-nya Islam atau nenek-nya Islam sa-orang daripada bapa-nya atau di-dapat ia lagi kecil di-dalam negeri Islam.

(62) Peri pada menyatakan hukum orang menuntuti sa-orang orang.

Jika ada saksi-nya, di-dengar hakim; jika tiada saksi-nya daripada yang menuntut itu + dan jika munkir yang di-tuntut +<sup>77</sup> jika ia mahu bersumpah, sumpah ia daripada tuntutan itu; dan jika tiada ia mahu bersumpah, di-beri nyatakan<sup>78</sup> ya'ani kembali sumpah itu kepada yang minta bersumpah. Bermula menuntuti-lah suatu benda. Jika yang di-beri-nya tuntutan pada tangan sa-orang orang, maka sahut yang di-tuntuti itu, "Benda itu benda aku," kedua-nya menuntut benda itu, yang pada tangan-nya benda itu ia bersumpah; dan jika ada benda itu pada tangan dua orang, kedua-nya mengatakan benda-nya, kedua-nya bersumpah, di-bahagi benda itu akan kedua orang itu. Bermula barang siapa bersumpah akan perbuatan diri-nya, "Bahawa benda itu thabit benda aku"; barang siapa bersumpah perbuatan lain, jika ada ia akan mengadakan, "Memangnya bahawa ku-tahu akan dia mempunya akan perbuatan si-anu;" jika bersumpah akan menidakkan, "Bahawa memang-nya aku tiada tahu akan pekerjaan itu".

(63) Peri pada menyatakan hukum segala saksi lima perkara:—

Pertama Islam dan baligh dan berbudi dan merdheka dan adil. Dan lima perkara itu: bahawa hendak menjauhi dosa yang besar, dan jangan berbuat dosa kecil, dan baik kelakuan-nya dan jangan mereka gusar dan memeliharakan laku-nya serta nama-nya.

Bermula tiada zinah thabit tetap melainkan empat laki-laki.

Dan tiada thabit melainkan dua laki-laki pada segala had sa-perti had minum dan menchuri dan menyabong dan membunuh orang dan murtad, dan kisas pada nyawa dan pada anggota, dan had bermaki dan ikral pada segala perkara ini: nikah dan talak

dan mērdēheka dan Islam dan pada amanat dan pada wakil dan wasiat dan mēlihat bulan, mēlainkan bulan Ramthan pada dēngan sa-orang orang.

Bermula tiada thabit mēlainkan dua laki-laki atau dēngan orang pērēmpuan tiada thabit dēngan pērēmpuan sa-banyak pada bēniaga bērpulangan dan mēngēmbalikan bēnda yang di-bēli-nya, jika bērjual dan bērsandar, dan pada jual dan pada mēngaku dan pada sulh<sup>79</sup> dan pada mēlepaskan dan pada utang dan pada mēminjam dan pada upahan dan pada sa-kutu dan pada mēmbēri dan pada mērampas dan pada mēmbinasakan.

Bermula tiada thabit mēlainkan laki-laki dua orang atau sa-orang laki-laki dēngan dua orang pērēmpuan atau ēmpat orang pērēmpuan pada bēranak dan bīkr dan munib<sup>80</sup> ya'ani janda dan sēgala 'aib pērēmpuan dan sēgala yang tērbanyak pēkerjaan-nya sēgala pērēmpuan dia.

Bermula pēri hukum mēnuntut dan yang di-tuntut-nya dari-pada sabda Nabi salla 'llāhu 'alaihi wa-salam: *al-bayyinat 'ala 'l-mudda'i wa'l-yamin 'ala man ankara*, ya'ani saksi pada orang yang mēnuntut bērsumpah atas yang munkir, tiada dapat tiada di-biharakan kapada kathi.

Bermula tiada ada daripada yang mēnuntut mēnyatakan bēnda yang di-tuntut-nya, kadar-nya dan bagai-nya, dan bēnar ia ēmpu-nya: jika mēnuntut ēmas, hēndak di-katakan-nya bagai ēmas itu dan mutu-nya dan timbangan-nya.

Bermula jika mēnuntut manikam, hēndak-lah di-katakan-nya harga-nya, karna manikam itu tiada dapat di-hisabkan harga-nya, yang kēchil dan yang bēsar; ada lagi yang kēchil lēbeh harga-nya, ada lagi yang bēsar kurang harga-nya.

Bermula jika mēnuntut, di-katakan-nya bēnda itu pēri-nya dan bagai-nya dan harga-nya, maka di-dēngar oleh hakim tuntut-nya itu, maka di-tanyaī oleh hakim, "Ada-kah saksi-mu?" Jika ada saksi-nya, di-suroh-nya bawa. Jika kata-nya, "Hēndak ku-sumpah. Saksi-ku tiada", di-suroh bērsumpah orang yang di-tuntut; jika ia bērsumpah, hilang bēnda yang di-tuntut itu; jika orang yang di-tuntut itu tiada mahu bērsumpah, di-idarkan-nya sumpah itu pada yang mēnuntut itu; hēndak yang mēnuntut itu bērsumpah; jika tiada ia mahu bērsumpah, hilang tuntut-nya itu.

Bermula jika mēnuntut pada orang mati atau pada orang gila atau pada kanak-kanak atau pada orang ghaib jauh sa-hari sa-malam (jika kurang daripada sa-hari sa-malam hēndak-lah di-panggil) atau di-tuntut pada kanak-kanak atau pada orang gila,

hëndak dua saksi dëngan sumpah orang yang mënuntut itu, maka di-suroh bëri yang di-tuntut-nya itu.

Bërmula jika mënuntut sa-orang laki-laki yang baligh di-katakan-nya hamba-nya, maka sahut orang itu "Asal aku mërdëheka", hëndak di-pinta-nya saksi daripada yang mënuntut: yang di-tuntut, di-sumpahi; jika tiada saksi-nya, yang mënuntut mêngadakan saksi dan yang di-tuntut pun hëndak mêngadakan saksi; jika tiada di-ambil-nya, thabit bahawa hamba-nya.

(64) Përi pada mënayakan hukum jika sa-orang mënuntut pada sa-orang, "Bahawa engkau hamba-ku," maka sahut-nya, "Sunggoh aku hamba-mu, tëtapi sudah engkau mërdëhekakan, atau yang bërjual aku kapada-mu mërdëhekakan aku." Di-pintaï saksi, bahawa ia di-mërdëhekakan tuan-nya. Jika ada saksi akan dia mërdëheka, kabulkan saksi-nya. Jika ada saksi yang mënuntut mêngatakan ia hamba, saksi yang dia di-mërdëhekakan tërlëbeh utama, jadi mërdëheka ia.

(65) Bërmula sumpah itu dua përkara: suatu sumpah di-përbësar pada mënuntut darah dan pada nikah dan pada talak, pada këmali pada istëri-nya, pada mërdëheka dan sëgala had harta dan pada banyak, jika emas dua-puluh mithkal, pada tiap-tiap mithkal itu kurang sa-kupang dua emas; jika bëndi di-hargakan, jika ada harga-nya dua-puluh mithkal emas atau perak. Sumpah yang bësar sa-këhëndak hati yang mënnyumpahi di-masjid juma'at pada hari Juma'at di-atas minbar.

Jika sëgala pëkërjaan yang tiada had dalam-nya atau pada harta kurang daripada dua-puluh mithkal, di-ringankan sumpah-nya dëngan mënnyëbut nama Allah ta'ala, pada kata-nya, "Dëmi Allah ta'ala bahawa tiada dëmikian atau tiada harta-mu pada aku", lëpas yang di-tuntut daripada tuntutan itu. Saksi pada hak Allah ta'ala (sapërti mëmïnjam dan zina, pada sëgala yang tiada hak Allah B) dan manusia di-kabulkan. Jika saksi bërkata dëngan tiada di-tanyaï hakim, saksi karna Allah ta'ala nama-nya. Ada pun jika pada hak manusia, tiada di-kabulkan. Jika bërkata tiada dëngan di-tanyaï hakim, saksi fadlul nama-nya.

Bërmula saksi jika dusta, di-ta'azizkan hakim, di-kataï dan di-dëraikan, jika sangat dusta-nya, di-tulis muka-nya di-gulingkan pada sëgala pëkan sa-këhëndak hakim karna di-ta'azizkan ia tiada bërtëntu, sa-këhëndak hakim; jika di-palu, jangan sampai pada dua-puluh palu-nya. Pada sëgala pëkërjaan yang tiada had-nya tuntutan-nya, dosa-nya di-ta'azizkan di-katakan hakim bëtapa këhëndak di-katakan, di-dirikan di-hadapan jama'ah di-kataï-nya maksud mënchari dia di-përmaluï.

Bërmula hëndak di-hantar yang mënuntut ka-hadapan hakim, këdua-nya di-suroh bërdëri di-samakan dudok-nya yang di-tuntut

dan yang menuntut di-samakan pada m.s.k.-nya,<sup>81</sup> kedua-nya di-sahut salam-nya, bagi hakim diam sa-hingga berkata kedua-nya, atau berkata hakim, "Siapa yang menuntut antara kamu kedua ini?" Jika ia menuntut, ikral yang di-tuntut itu, di-suroh beri; jika ia munkir, berkata pada yang menuntut, "Ada-kah saksi-mu?" Jika di-kata-nya ada saksi, di-suroh bawa, maka kata saksi itu di-dengarkan. Jika tiada saksi, di-sumpahi yang di-tuntut itu hendak-lah ada di-tempat menghukumkan pada ketika lusa, jangan... pijak<sup>82</sup> oleh orang berkhabar<sup>83</sup> itu; tiada bagi hakim menghukumkan pada ketika amat panas dan pada ketika amat dingin dan pada ketika amat lapar dan pada ketika sangat kenyang dan pada ketika hendak tidur.

Bermula haram pada hakim menerima hadiah orang yang membawa hadiah kapada-nya, jika ada makanan-nya daripada baitu'l-mal atau daripada raja kehidupan-nya tertentu; jika tiada harus mengambil hadiah, di-hukumkan dengan sa-benar-nya; di-ambil-nya pemberian orang, di-hukum-nya itu bukan dengan sa-benar-nya, itu-lah nama kaiyul yang haram bi 'awni Allah malik al-wahi.

(66) *Bismillāhi 'r-Rahmani 'r-Rahimi.*<sup>84</sup>

*Qāla llāhu ta'ala, "Wa 'ati 'u llāhu wa' ati 'u'r-rasūla wa 'ulī 'l-amri minkum."*

Bermula segala mantēri dan sida-sida dan bala tēntēra-nya sakalian hendak-lah mengikut saperti firman Allah ta'ala itu diturut di-lakukan saperti *amara bi'l-ma'rūf wa-l-nahī 'anil-munkar*. Itu-lah pekerjaan segala mantēri dan segala orang yang memegang pekerjaan nēgēri itu. Hendak-lah kamu sakalian dari pagi dudok di-balai karna segala hamba Allah banyak di-serahkan Allah kapada Raja di-suroh-nya kau-bēlai karna sabda Rasul Allah sall'allahu 'alaihi wa-sallam: *Kullukum rā'in wa-kullukum mas'ūlun 'an ra'iyatihi* ya'ani "segala kamu lagi akan di-tanya'i daripada kau-bēla (raayat) kamu." Sebab itu-lah jika dapat, hendak-lah di-sudahkan barang pekerjaan-nya di-dalam dunia supaya kita ringan di-dalam akhirat. Karna jikalau Raja 'adil sa-kali pun, jika tiada mantēri dan segala orang di-dalam nēgēri itu melakukan dia, tiada akan dapat berlakukan 'adil Raja itu<sup>85</sup>.

Bermula jika ada Raja itu berani dan bijaksana tahu sa-kali pun, jika mantēri dan ra'ayat sakalian tiada sa-pakat, tiada akan sentosa; saperti api jika tiada kayu, tiada akan bernyala api itu; demikian lagi Raja dan mantēri.

Bermula yang ra'ayat bala itu penaka bumi.<sup>86</sup> Hadith: *Al-'abdu tinatun min tinnil-mawla*, "yang hamba itu tanah tuan-nya; jika bumi tiada, suatu pun tiada-lah," karna kata Farsi:

*al-ra'yyat bekh, al-Sultan darakht,*

ya'ani bala itu umpama akar, yang Raja itu umpama pohon kayu, karna jikalau tiada akar pohon pun tiada dapat berdiri. Karna itu-lah maka aku minta kaseh pada kamu sakalian, hubaya-hubaya jangan sengan ka-balai, tafahhus sęgala kęluarga-mu yang bersalahan itu supaya yaum al-kiamat akhir-nya kamu diringankan oleh Allah ta'ala.

(67) (*Note.* The next sections in both MSS. occur in the Malacca Digest (§ 25 foll., p. 42 to p. 47 line 7 van Ronkel's Edition). This matter is therefore omitted. § 68 *infra* occurs in both MSS.; § §69 — 82 occur only in M.S. A; § § 83, 88 and 94 in both MSS.; § § 84—87, 89 & 90 only in MS. A; § 92 only in MS. B.).

(68) Bęrmula sęgala orang yang męndapat ęmas perak kain, barang suatu bęnda di-dapati-nya, hęndak di-bawa-nya ka-jambatan tiga hari, di-saksikan-nya. Jika tiada ęmpunya harta itu, di-bawa-nya kapada mantęri dan pada sęgala orang bęrkęrja Raja. Jika dęmikian, tiada orang itu salah; jika tiada dęmikian, kęmudian di-kętahui, dęnda-nya sapęrti orang męnchuri juga.

(69) Bęrmula sęgala pęrahu, dayong, pęngayoh, kajang ha-nyut jangan di-kapar. Jika di-kapar, jika tiada di-bawa ka-jam-batan tiga hari, jika tiada dęmikian, salah.

(70) Bęrmula jika hamba orang tęrpalu oleh mulut-nya chan-dala lalu mati, dęnda-nya sa-harga-harga-nya juga.

Bęrmula jika orang męrdęheka męmbunoh hamba orang, tiada di-kisas męlainkan sa-harga-nya juga.

Bęrmula jika bapa męmbunoh anak, tiada harus kisas.

Bęrmula jika anak mantęri męmbunoh anak bala, di-lihat sa-lah-nya, sa-kira-kira-nya itu dosa-nya.

Jika orang atau binatang tęrkęna bukan di-sahaja lalu mati, tiada harus di-bunoh męlainkan dęnda.

Bęrmula kafir męmbunoh Islam, di-bunoh. Ada pun jikalau Islam męmbunoh kafir, tiada harus di-bunoh męlainkan dęnda.

(71) Bęrmula sęgala orang datang ka-rumah-nya orang pada malam, atau anak raja atau anak mantęri, atau barang orang, jika ia męngętok pintu pada yang ęmpunya rumah di-kęrasi-nya

masuk juga ia, jika tertikam mati sia-sia, suatu pun tiada per-kataan.

(72) Bermula segala benda yang di-churi orang, jika di-per-tarohkan-nya atau di-lihat-nya tahu ia benda itu oleh-nya men-churi tiada mahu mengatakan dia, orang itu salah pada Raja. Bermula segala yang di-churi orang itu atau di-turunkan-nya atau di-upahkan-nya atau perahu di-upah-nya, jikalau kedatangan orang itu salah, denda-nya mati, barang benda yang di-rumah-nya Raja empunya dia.

(73) Ada pun harta dagang sa-puloh ambil dua, hukum-nya.

(74) Bermula orang yang memegang hamba orang perēmpuan atau laki-laki berpesonakan, jangan bermalam di-rumah-nya; barang siapa memegang dia bermalam, denda-nya denda mati.

(75) Bermula sireh, pinang, garam, arak, sa-puloh ambil ēsa; barang siapa membawa benda itu, hendak-lah di-bawa pada orang memegang chukai; sudah di-beri-nya chukai-nya, maka dapat di-jual-nya. Barang siapa belum memberi chukai berjual dahulu, salah, di-denda; jika orang baik, denda-nya sa-tahil sahaja; jika hamba orang, tuan-nya membayar sa-tahil sahaja. Bermula damar, rotan, chukai-nya sa-puloh ēsa.

(76) Bermula titah Raja akan segala yang di-larangan Raja Melayu dahulu kala, "Ini-lah pesan-ku kepada-mu sakalian bala tentera, melarangkan segala yang kuning, jangan di-ambilkan-nya karna birai tilam, dan jangan di-ambilkan-nya birai tabir, dan jangan di-ambilkan sapu tangan, dan jangan di-ambilkan k—r—ng benda kamu, dan jangan di-ambilkan perhiasan rumah kamu, melainkan akan baju dan destar dan kain, melainkan tiga perkara itu yang dapat di-pakai. Bermula barang siapa memakai dia, denda mati.

"Bermula barang siapa dari purba kala pun anak orang besar-besar sa-kali pun anak orang keluaran, tiada dapat memakai gelang kaki emas melainkan anak raja.

"Bermula segala orang beremas, jika tiada anugeraha, tiada dapat di-pakai-nya, hanya-lah kēlēbahan kami raja daripada bala sakalian. Itu-lah kita pinta pada kamu sakalian karna pusaka pada kita segala raja."

*Note.* The end of § 76 is corrupted from the Malacca Digest (van Ronkel pp 47—48). Then comes *Al-salāmu 'alaikum ajma'ina*. There follows a repetition of the first three sentences, in the duties of ministers, that follows § 64 *supra*. Then comes the passage from the Malacca Digest (van Ronkel p. 49, first seven lines) giving the



names of its two compilers, and the fees for redeeming (*tēbus*) slaves. MS. A continues—

(77) (a) Bab pēri mēnyatakan hukum orang bērkirim kapada kapal atau jong, maka bēributan di-tēngah laut, maka ia mēmbuang harta-nya; jika sa-tēngah tērbuang, mēnyileh yang ēmpunya kapal dan jong itu; jika habis tērbuang, maka tiada ia mēnyileh. Bērmula jika sampai ka-nēgēri maka kēchurian, maka tiada ia bērkirim surat kapada orang yang ēmpunya pērkiriman itu, maka mēnyileh ia sa-tēngah.

Sa-bērmula lagi sapērti pērahu, lain daripada kapal dan jong, maka ia mēmbawa pērkiriman orang, maka bēributan di-tēngah laut, maka di-buang-nya sa-tēngah harta-nya, maka tiada ia mēnyileh. Maka kēchurian ia di-dalam nēgēri, maka tiada bērpēsan atau surat, khiyar hakim mēnyileh sa-tēngah pēkirim itu.

(b) Sa-bērmula lagi orang mēmbawa pēkirim dari kampung sa-buah kapada kampung sa-buah, jika ia lupa karna sakit-nya, mēnyileh sa-tēngah; jikalau sēbab karna + hati-nya kapada, + sē-bēlah-nya pēkiriman itu.

Bērmula lagi maka sa-orang mēreka itu bērkirim kapada orang yang di-titahkan sēgala raja-raja, bērsalahan dēngan mēreka itu pērgi sēndiri-nya sa-orang bērkirim kapada-nya, maka kēributan atau kēchurian, khiyar sēgala hakim jika tiada sab.t (? = thabit) kapada tēman-nya yang di-titahkan itu ia mēmbuang atau kēhilangan, maka di-sēmbunikan ka-bawah bumi, hukum-nya, apakala sab.t yang dēmikian itu, maka tiada-lah mēreka itu mēnyileh lagi; kurnia daripada raja akan mēreka itu mana sa-patut-nya, ada yang sa-tahil, ada yang tēngah tahil, ada yang sa-puloh ēmas, ada yang ēmpat ēmas.

(78) Bab pada mēnyatakan sēgala orang yang bēranak angkat sama harr, jika kēsalahan sa-kali pun kapada yang mēngambil itu, jika patut akan nyah di-nyahkan: jikalau kēsalahan-nya itu patut atas nyawa-nya, di-bunoh; akan harta yang tēlah sudah di-bērikan itu tek.njakan akan mēreka itu.

(79) Bab pada mēnyatakan sēgala orang yang bētarohkan diri kapada yang bukan kē'aifan-nya (? = kērabat-nya) dēngan kēredlaan sēgala waris-nya; maka ia hēndak kēmbali kapada ibu bapa-nya, hēndak-lah dēngan kēredlaan orang yang tēmpat dudok itu. Jika ada kēsalahan tēmpat dudok itu maka tinggalan-nya, khiyar hakim dēngan bētapa salah-nya maka tilek kapada kēsalahan-nya; jika salah-nya itu, atas dua bagai: pērtama, hēndak di-pērchabuli-nya; kēdua, di-nēsta-nya dēngan nēsta-nēsta yang tiada harus di-kēluarkan. Maka hukum-nya pun dua pērkara: apakala hēndak di-pērchabuli-nya, di-dēnda, hukum-nya sa-puloh tēngah

tiga. Jika di-něsta-něsta saja, maka ia kěmbali, sěgala h.r.k.t-nya (? = harta-nya) sěmua-nya di-bawa-nya: khiyar sěgala hakim, tiada harus di-bahagi. Apabila tiada suatu kěsalahan-nya akan měreka itu, maka tinggalkan oleh yang mēnarohkan diri-nya itu; barang yang ada h.r.k.t-nya itu, khiyar sěgala hakim, di-bahagi tiga, sa-bahagi kapada orang yang bērtarohkan diri-nya, dua bahagi kapada orang yang mēnaroh.

(80) Bab yang mēnyatakan hukum sěgala orang mēngambil anak angkat akan anak hamba orang lain, maka di-bawa-nya bēlayar, mula-mula itu dēngan sa-tahu tuan-nya, kēmudian dari itu maka di-bawa-nya tiada mēmbēri tahu tuan-nya. Khiyar sěgala hakim, maka mēnyileh orang yang ģmpunya anak angkat itu sa-tēngah harga, jika ia mati; jika tiada ia mati, maka pěkērjaan-nya sa-bahagi di-bayar-nya oleh bapa angkat.

(81) Bab yang mēnyatakan pēri hukum sěgala orang yang bērutang. Pěrtama, utang-nya itu dua bagai: suatu utang di-pěrjanjikan, kědua utang sahaja. Akan khiyar sěgala hakim, jika utang yang di-pěrjanjikan, apakala di-tinggalkan, jika sa-hari hari sa-kali pun, kěna pěkērjaan timah orang itu, mana-kala lari naas jadi hamba orang yang ģmpunya timah itu, jangan měreka itu lari kapada raja atau kapada orang bēsar. Jika orang bērutang sahaja, apakala ia lari, naas jadi hamba raja. Jika ia mēninggalkan kěrja, di-palu akan měreka itu lamun jangan bērdarah.

Sa-běrmula lagi khiyar sěgala hakim, ada tēmpat-nya hēndak mēnchari timah, itu pun daripada.....?

(82) Bab pada mēnyatakan sěgala dagang masok nēgėri; maka ia mēndapat di-kuala sungai itu, maka di-bawa-nya ka-dalam nēgėri, maka di-bėri-nya tahu kapada Shahbandar mēnēngar daripada orang yang lain. Maka di-suroh ambil oleh Shahbandar. Itu pun di-bahagi juga, tėtapi salah orang yang mēndapat oleh sa-tēngah bahagi kapada yang mēndapat dia; lain daripada itu, maka di-sěmbahkan Shahbandar kapada raja-nya. Maka di-sambut oleh Pēnghulu Bēndahari; ia-lah yang mēnyěrahkan kapada sěgala pēnghulu.

(83) Bab pada mēnyatakan tēbusan (dēngan B = *slave*) orang lari. Jikalau di-dalam kota sa-kupang tēbus-nya, dan jikalau di-luar kota hingga 'amarah nēgėri dua kupang dan tiada, jadi mērampaskan sěgala pərbawaan-nya. Dan jikalau di-luar 'amarah sapėrti di-batangan, 5 bidor; dan di-kuala Sungai Buloh s.k.b.t. (سكبت) tēbus-nya, barang di-bawa-nya sapėrti pisau, parang dan sěgala bēnda yang kurang harga-nya jadi rampasan, barang yang lain daripada itu kěmbali kapada tuan-nya. Běrmula yang ka-hilir hingga Kuala Dēdap lima-bėlas; hingga Kuala Perak dua-

puloh, 'amarah nĕgĕri dua kupang dan tiada jadi rampasan pĕmbawaan-nya; hingga Kuala Dinding 30; hingga Kuala Bĕruas 35; hingga Kuala Larut 45; hingga Batu Kawan 50. Ka-timor hingga Kuala Bĕrnarn hingga Nibong Hangus 40; hingga Pasir Panjang 50. Sa-bĕrmula lagi jikalau ka-tĕngah laut hingga Pulau Sĕmbilan 30; hingga Pulau Tĕmborak 50. Sa-bĕrmula lagi dari Gĕronggong ka-Tĕpus 5 *bidor*; hingga Tĕpus ka-Dĕdap s.k.b.t.; hingga Bukit Tunggal 20; hingga Kuala Bĕruas bĕrjalan 30; hingga Kangsar s.k.b.t. Dĕmikian lagi dari Bandar hingga Kuala Pĕlus 20; dĕmikian lagi dari sana ka-Bandar. Hingga Jĕram Panjang 30. Dĕmikian lagi hingga Kuala Rawil (Rul, MS. A) 35; pĕrtĕngahan Pangkalan dĕngan Kuala Rawil 45; dan hingga ka-Pangkalan Gua 50; dan hingga Tĕmĕngor 50; dan hingga pĕrĕnggan 50. Apakala bĕrjalan ka-Kuala Larut 35. Sa-bagai lagi ka-Kinta hingga Nyior Manis s.k.b.t. dan Karai dĕmikian. Dĕmikian juga dari sana hingga Bukit Chinak 25; dan kapada Bukit Alas 50; ka-Sungai Raya s.k.b.t. Dĕmikian lagi ka-Kampar dan Chĕndĕriang dan ka-Batang Padang dan ka-Sungai s.k.b.t. juga.

(84) Bab pada mĕnyatakan orang yang mĕrampas. Barang siapa mĕrampas hak orang, hĕndak di-kĕmbalikan-nya + upah, mĕngĕmbalikan bĕnda itu ada upah. + Jika ada bĕnda itu binasa, maka yang mĕrampas itu mĕnyileh sapĕrti harga-nya bĕnda itu di-sileh-nya, dan sapĕrti binatang dan manusia atau lain daripada itu maka di-sumpahi yang mĕrampas itu, apabila tiada saksi akan harta bĕnda itu. Dan barang siapa mĕrampas biji pĕrhumaan, bĕbĕrapa tahun lama-nya sakalian yang jadi daripada biji itu akan orang yang ĕmpunya biji juga. Jika binasa daripada biji itu, yang mĕrampas itu mĕnyileh kapada yang ĕmpunya.

[Bĕrmula jika orang mĕrampas, nama mĕrampas: jika harga sa-kĕping kasa pun, dĕnda mati, karna nama rampas itu sadikit atau banyak sama juga MS. B.].

(85) Bab pada mĕnyatakan hukum orang mĕmbĕri orang suatu bĕnda, jika tiada sampai sharat bĕri itu, maka tiada di-hukumkan, khiyar sĕgala hakim, jika ada saksi sa-kali pun. Ada pun sharat bĕri itu, jika sudah sampai kapada tangan yang mĕmbĕri itu, maka sampai sharat-nya, jangan sa-kali warith-nya.

(86) Bab pada mĕnyatakan hukum 'abdi mĕlukaĭ harr, maka khiyar sĕgala hakim + dahulukan + hukum-nya. Jikalau sayang tuan-nya, di-sileh-nya sa-nilai-nya.

(87) Bab pada mĕnyatakan orang bĕrutang, maka ia mati, maka suatu pun tiada harta-nya tinggal kapada anak-nya; maka tiada harus anak-nya itu di-jualkan akan pĕmbayar utang ibu bapa-nya.

(88) Bab pada mēnyatakan hukum orang bērutang tiada di-kētahuī-nya oleh anak istēri-nya, tiada harus bayaran-nya.

(89) Bab pada mēnyatakan undang kēlian. Pērtama kēna pēlēsit di-dalam kēlian. Tēngah orang mēnyudut, maka masok orang, maka hilang-lah bijeh itu, kēna-lah ia sa-bahara. Jikalau dēmikian, tiada harus di-kēnakan mēlainkan di-ganti-nya bēlanja juga. Jikalau dulang di-pēchahkan orang atau pēngayoh patah, di-ganti; atau orang mēnēnt.k tiang (*or* ? tēbing) rēlau, dēnda-nya bēras sa-kampit, ayam sa-ekor, arak sa-gantang: jikalau hamba orang, di-balor (? *balun*) hukum-nya. Lain daripada itu saka-lian hanya di-ganti-nya-lah.

(90) Bab ini pada mēnyatakan hukum ayam sabongan. Maka oleh orang di-angkarai-nya ayam itu, maka oleh hakim di-kira-kirakan bēbērapa hēndak di-sabong-nya oleh juara itu, dēmikian-lah di-suroh bayar oleh hakim. Tētapi ayam itu bungaran, jikalau ayam itu sudah mēnang, maka di-angkarai-nya oleh orang, maka oleh hakim di-suroh-nya bayar harga ayam itu ganda juga.

(91) Bab pada mēnyatakan bērsēlam. Taroh sēlam itu saratus tēngah dēlapan bidor. Maka di-kēluarkan hasil sēgala hakim, kapada Bēndahara hasil balai s.k.b.t., dan hasil Tēmēnggong s.k.b.t.; utas-utasan s.k.b.t., kapada orang yang mēnang upah mēnyēlam, dēngan yang mēmēgang turus s.k.b.t., surat yang di-bawa mēnyēlam itu, lima bidor; taroh kata ēmpat bidor; tangkai siuman, lima bidor; hak bēntara lima bidor; kapada orang yang alah mēnyēlam sa-kupang, dan yang mēmēgang turus sa-kupang, surat yang di-bawa mēnyēlam itu pun sa-kupang jua, mēnjadi tēngah dēlapan bidor sēmua-nya.

(92) Bērmula tiada di-kisas pada luka kēpala sapērti yang tērsēbut itu, mēlainkan dēngan luka muziha jua, maka di-kisaskan hukum-nya. Tujoh bagai luka di-kēpala; hashima nama-nya ia itu bēlah-nya yang kēpala itu, maka akan diat-nya lima unta tahl dērham; lain daripada itu luka muziha itu, jikalau khata' dēngan tērus-lah atau shibh 'amd sa-rupa dēngan di-sahaja sa-kali pun, di-bēri-nya diat juga; kēdēlapan bagai luka di-kēpala itu munaqqila nama-nya ia-itu bērpindah-lah yang daripada tēmpat-nya, maka akan diat-nya lima ekor unta kira-kira lima tahl dērham; kēsēmbilan bagai luka kēpala ma'mum nama-nya ia-itu sampai-lah kapada kēndi-kēndi otak itu, maka akan diat-nya thuluth diat hukum-nya, sa-pērtiga daripada unta karimah tiga-puloh tahl dērham tiga busok; kēsapuloh bagai luka kēpala damgh nama-nya ia-itu bēlah-lah kēndi-kēndi otak itu, diat-nya thuluth juga ya'ani sa-pērtiga diat nyawa-nya.

(93) Bērmula bērjudi, bērchēki, bērgasing, bērajak-ajak tali saing, jangan sakalian-nya; nama judi juga.

**Appendix I.**  
**(being § 66 in MS.B.)**

\* (herti-nya saperti amanat itu), dengen tiada taksir-nya tiada menyileh. Jika di-pakai-nya orang yang menaroh amanat itu, jika dengen izin yang empunya sa-kali pun, pada ketika di-pakai-nya itu binasa, hendak-lah di-sileh-nya. Jika hendak berlayar, di-kembalikan-nya pada yang asal-nya amanat; jika tiada yang empunya amanat, pada wakil-nya atau pada kathi; jika tiada pada kathi, amin raja di-berikan. Jika di-bawa-nya berlayar, jika binasa, di-sileh-nya; dan jika amanat orang atau orang pelayaran pada orang pelayar, barang t.m.p.k di-tempat mana ia hendak di-buat. Jika berkata orang di-taroh amanat, "Sudah di-kembalikan amanat kapada orang empunya harta," maka empunya harta itu munkir, saksi-nya tiada, antara itu bersumpah yang menaroh amanat; tiada pada sumpah, hendak-lah saksi, jika di-kata-nya mengembalikan kapada orang waris-nya empunya harta. Bermula jika berkata yang menaroh amanat, "Bahawa sa-nya hamba kembalikan kapada si-anu dengen kata-mu," maka munkir yang empunya itu, bersumpah yang empunya harta, di-sileh-nya amanat itu.

Barang siapa berlaku kelakuan-nya di-dalam hukum shara', harus ia berwakil akan ganti-nya saperti berniaga membeli, dan nikah, dan talak, dan menuntut segala hak-nya harus dengen upah; dan tiada berupah bermula tiada harus menyileh wakil yang binasa dalam tangan-nya melainkan taksir-nya.

Bermula yang wakil dengen pesurohan-nya yang berwakil akan yang berniaga, tiada harus-nya berjual dengen bertanggoh, dan tiada harus-nya dengen merugi yang nyata, dan tiada harus berjual benda itu melainkan dengen biaya negeri itu. Jika berniaga dengen anak-nya orang yang berwakil itu, di-terima-nya harga benda itu dahulu, maka benda itu di-berikan-nya; jika di-serahkan-benda itu dahulu, kemudian akan di-terima-nya harga-nya, tiada di-bayar-nya harga-nya oleh anak-nya itu, hendak-lah di-sileh-nya benda itu oleh wakil-nya. Apabila berkata yang berwakil, "Benda-kau dengen sa-ribu jika di-lakukan-nya amr bi'l-ma'ruf" . . . ).

## Notes on the Text.

† indicates corrupt and doubtful passages

- (1) Only MS. B contains more than this first sentence of the Arabic Preface.
- (2) Only MS. A contains this sentence. The following two paragraphs are reconstructed from both MSS. which are both corrupt but both supplement each other.
- (3) For *menjenakai* A reads *menunjok*.
- (4) غرور A.; غرت B.
- (5) † † omitted in A.
- (6) *běroleh daripada nĕgĕri dar a'd-dunia dar a's-salam, ia-itu nĕgĕri Mĕlayu* B.
- (7) *tĕra-tĕra* B.
- (8) *akhyar, khīar, ikhtīar*, passim.
- (9) *di-t.m.p.h-nya* B.
- (10) A sentence apparently misplaced.
- (11) For *tĕmpat* B reads *di-tampar*.
- (12) For *tahasarat* = "with whom sexual intercourse is unlawful" B reads *di-t.kaseh-nya*.
- (13) For *gundek-gundek*, A reads مغفل نای.
- (14) ددخ B; ددخ *dayyakha* A.
- (15) A. omits 'abdi sama 'abdi.
- (16) The following two sentences appear to be misplaced.
- (17) *hĕndak akan dia* A.
- (18) Or ? *mĕmaki*.
- (19) *kĕmbali* A.
- (20) *aiguman* A.
- (21) *di-hurongkan* B.
- (22) *di-kirakan-nya* A.
- (23) *mĕnyangkakan* A.
- (24) *hal* A.
- (25) *mĕnyuleh hal* A.
- (26) ددج A.
- (27) Spelt *but-nya* A. & B.
- (28) *Kanching* A. : ? = Ganchong.
- (29) A. omits *hingga Tĕrusan*.
- (30) بنجه A. & B.
- (31) *Bidor* A.

- (32) *Mërching* A. & B.
- (33) سيلفلي A.; omitted from B.
- (34) *k.lut.n* A; *k.luat-n* B.
- (35) *Kërmatan* A.
- (36) انتيك A. & B.
- (37) *Mëngaling* A.
- (38) *Liwal* B.
- (39) *kanji* A.
- (40) *di-përeksai-nya* B.
- (41) *akan dua* B.
- (42) The first three paras are a variant of the *Risalat Hoekoem Kanoen Mëlaka*, ed. van Ronkel, pp. 49—50.
- (43) *lantin* A. *passim*, as in the Malacca Digest; *lantai* B.
- (44) سبب حيات A; سي حيات B.
- (45) *d.k.sina* A; *d.kna* B.
- (46) For these two words B substitutes *Tammāt*.
- (47) *p.da j.rit* B.; ? = *di-përchërai-nya*.
- (48) *tah. m.nuj. dan m.ny.r.t.* B.
- (49) *bërsuam.* A.; *suma* B.
- (50) *sa-orang* A.
- (51) + + omitted in A.
- (52) + + do.
- (53) Omitted in B.
- (54) *d.r.san* B.; *dosa-nya* A.
- (55) *dinar* B.
- (56) تمبنز B.; *t.mb.k* A.
- (57) *suatu* A. & B.
- (58) Omitted in A.
- (59) *suatu* B.
- (60) *di-nyatakan-nya kita akan tuan-nya* B.
- (61) Omitted in B.
- (62) Omitted in B.
- (63) + + only in A.
- (64) *s.t.rida* A.; *s.zih* B.; ? = *si-Zayd*.
- (65) *dëngan* B.
- (66) Corrupt in both MSS.
- (67) *mëngaramkan* A. & B.
- (68) *mëmërdëhekakan* B.



- (69) Omitted from A.
- (70) *jolak-jalak* B.
- (71) *di-pêrhilakan* A.
- (72) A here inserts *orang ramahan*.
- (73) A. *puntong* passim.
- (74) Omitted in B.
- (75) *had* A.
- (76) Omitted in A.
- (77) do.
- (78) *di-bêradakan* A.
- (79) *s.luh* B; *s.luj* A; ? = *saluh* good condition.
- (80) *m.nib* = ? *thaiyib*.
- (81) *m.s.k-nya* B.; *mas.k tha* A.
- (82) *fij.k* B.
- (83) *berajar* A.
- (84) In MS.B there follows a broken section on *Amānāt*—see Appendix.
- (85) This para. is a variant of a section in the Malacca Digest (van Ronkel's edition, p. 48).
- (86) *Bêrmula yang bala itu paku bumi* A.

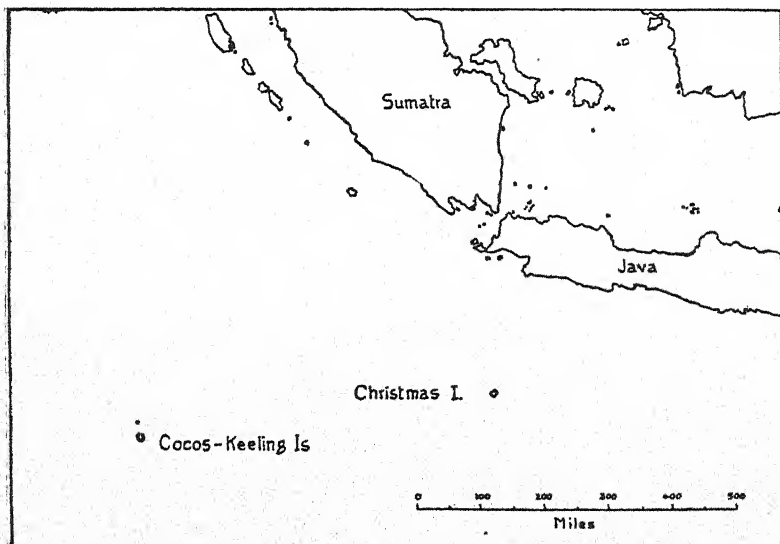
## The Island of North Keeling

By C. A. GIBSON-HILL, M.A., M.B.O.U.

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The group of islands known collectively as the Cocos-Keeling Islands lies in the eastern portion of the Indian Ocean, between  $11^{\circ} 49'$  and  $12^{\circ} 12'$  south of the equator, and  $96^{\circ} 49'$  and  $96^{\circ} 56'$  east of Greenwich. The nearest points of land are Christmas Island, 530 miles further east, and Engano, off the south-west coast of Sumatra, approximately the same distance to the north-east. The group consists of an atoll of about twenty-five islands surrounding a pear-shaped lagoon, seven miles wide and nine miles long, and a single island, 1,250 yards wide and 2,250 yards long, fifteen miles further north.

The main atoll has been inhabited permanently since 1827, when it was colonised by Alexander Hare and John Clunies-Ross. With them were the crews of their two trading vessels, consisting mostly of Sumatran and Javanese seamen, and a strange assortment of women from the far eastern ports, belonging to Hare. Hare himself withdrew to Batavia about two years later, leaving the island to Clunies-Ross and his heirs. The principal settlement is



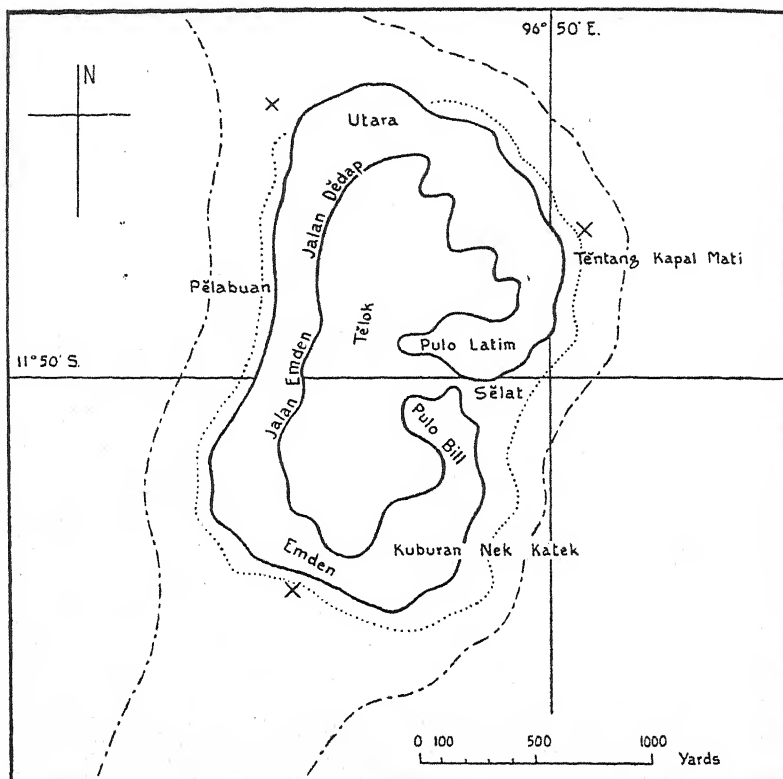
Map 1. Sketch map of the Indian Ocean south of Sumatra and Java, showing the position of Christmas and the Cocos-Keeling Islands.

now on the island known locally as Pulo Selma (Home Island). There are also a few people living on the most northerly island in the atoll, Pulo Luar (Horsburgh Island), and a relay station for the trans Indian Ocean cable on the neighbouring island of Pulo Tikus (Direction Island), where I lived for the first ten and a half months of 1941. An account of the history of the colony on the main atoll, with a description of it as it was at the time of my stay there, has appeared in an earlier issue of the J.M.B.R.A.S. (Gibson-Hill, 1947).

The main atoll is usually known as Cocos, after the Coconut Palm, *Cocos nucifera* Linn. The isolated, northern island is called North Keeling, in honour of Captain William Keeling, who is believed to have sighted the group in 1609, while homeward bound from Bantam, in Java. Landing on North Keeling is difficult, except at certain restricted times of the year, and there is no supply of good, fresh water. It is therefore uninhabited and virtually uninhabitable. By good fortune I was able to visit it for a day at the end of January, and for two days at the beginning of July. Prior to this it had been examined by two biologists, Dr. H. B. Guppy who landed for a day in the latter part of 1888 (Guppy, 1889), and Dr. F. Wood-Jones who spent a few hours ashore there in June, 1906 (Wood-Jones, 1912), but neither attempted a comprehensive description of the island and its fauna.

North Keeling, like Cocos, is a true coral island, though there is now little sign of living colonies round its coast. Its shape is approximately rectangular, and it is so orientated that its long axis deviates slightly to the east of north. The prevailing wind, the South-East Trade, therefore strikes more directly on the east side than on the south. Its principal occupants are sea-birds, which exist in thousands, and crabs, which in a few limited species are abundant. In addition there are bird lice. When mature these reach a diameter of about 10-12 mm: when small they are the size of a pinhead. The latter, though passing unnoticed, cover everything, and after a night spent on the island it takes fully a week to rid one's body of them.

In form the island is low and flat. The shore rises fairly steeply to a height of ten to fifteen feet, and from this peripheral ridge the ground slopes gently down to a large, shallow, sandy-bottomed lagoon which occupies the greater part of the interior. The entrance to the lagoon, which is still patent, is on the east or windward side. From this and other considerations in its structure it appears probably that North Keeling was not originally a single island, but that it was formed from the union, on the leeward side, of two smaller islands. The more southerly of these would seem to have arisen in the area now known as Kuburan Nek Katek, and the other between Pulo Latim and Tëntang Kapal Mati



Map 2. A sketch map showing the local Malay names given to the various areas on the island of North Keeling. The crosses mark the approximate sites of known wrecks.

(see Map 2). According to echo-soundings, made by a cable-repair ship in 1933, the submarine bank on which they stand is continuous with that of the main atoll. A narrow ridge, dropping to a depth of some four hundred fathoms, was found to run from the south end of North Keeling to Horsburgh Island at the north-west corner of the latter.

There appears to be only one place at which a landing can be made with safety. This is about half-way along the west coast of the island, where there is a suitable break in the fringing reef. The Cocos-Keeling islanders employ specially-built surf-boats, controlled by a crew of seven men and taking about five passengers, which are towed over to the island behind launches. The latter are anchored well outside the edge of the reef, and the surf-boats steered through the breakers onto the shingle beach. In 1941 the launches themselves were in a very bad state of repair, and formed the major risk in the journey.

If there is much sea running, a landing is not possible. Once the South-East Trade, which blows during the greater part of the year, is well established, the breakers, even on the sheltered side of the island, are generally too strong for a boat to be taken through them. Suitable occasions, therefore, usually occur only at the change of the monsoon. At these times the wind swings round to the east or north-east for several days, and may even disappear completely. In an average year, spells of this weather occur between the end of October and the beginning of February, and between the middle of June and the middle of July. It was the firm opinion of the late owner of the islands that the chances of a successful landing during the latter period are slight, but the records show that on at least four occasions, when the point was stressed, visits were made. I believe that during the recent strategic occupation of the main atoll, when it was used as a base by the R.A.F., landing were accomplished out of season with R.A.F. and Naval equipment.

Formerly regular trips were made to North Keeling every two or three years. There is no official record of when these were begun, but it cannot have been long after the main atoll was first inhabited. When Darwin visited Cocos in the *Beagle*, in April, 1836, he was shewn a fragment of greenstone, a little larger than a man's head, which John Clunies-Ross had picked up on the beach (Darwin, 1842, p. 540). The earlier journeys were undertaken to obtain sea-birds, principally boobies and frigate-birds, which were knocked down by means of an eighteen-foot bamboo pole with a long brass chain at the end of it. The same method is still employed, though the brass chain has given place to wire or thread. These birds are the nearest approach to meat that the majority of the Cocos-Keeling islanders ever get, and they are a much-sought delicacy. Actually the adult booby is rather indifferent eating, stringy, a little tough and somewhat flavourless. Juvenile birds, salted and fried in coconut oil, are better. The frigate-bird, on the other hand, when well cooked is definitely pleasant eating. The flesh is thick, and the flavour characteristic, defying exact description, but it is a little reminiscent of game which has not been hung quite long enough: it is neither fishy nor salty.

At a later date, when the small community on the main atoll had grown, longer visits were made for the purpose of collecting nuts and timber. These were continued until 1929. They ceased in a manner very characteristic of Cocos. For a number of years the gangs had been in the charge of a younger brother of George Clunies-Ross. When he died no substitute was found for him, and the work stopped. The wood sought by the Clunies-Rosses was mostly *Cordia subcordata* Lamm.: in addition some Mëngkudu, *Morinda citrifolia* Linn., and Kayu Dëdap, *Erythrina variegata* Linn., was also felled. The *Cordia* appears to have been taken in

large quantities, mostly for boat building, and it would seem as if much of the present *Pisonia-Cocos* belt was originally thickly strewn with it. A single exception to this routine occurred in 1915, when the full period was devoted to salvaging metal and other material from the wreck of the German cruiser *Emden* (see appendix I/C.) Very few official visits were made between 1929 and 1941, though the ubiquitous, predatory Japanese, who were at one time fishing in the vicinity, are known to have landed on several occasions. In 1940 they even deposited a large number of tins of petrol and oil there.

When the Clunies-Rosses were working North Keeling it was usual for forty to sixty of the Malays to live on the island for about three months. They were taken over on the first suitable occasion in November, and remained there until the weather began to break early in February. Communication was maintained with the main atoll. Boat-loads of nuts and timber were sent in once or twice a week, in exchange for supplies and drinking water. There are two wells on North Keeling, of a depth of twelve to fifteen feet, but the water, though not heavily salty, is definitely brackish. The Malays used it for washing and cooking, but they never drank it if they could get fresh water from Cocos. At one time it was thought to cure beri-beri, as it was noticed that mild cases sent to work on North Keeling occasionally recovered from their symptoms. The men lived in ataps huts, which have long since disappeared, on the west side of the lagoon. There was also a small wooden house for the overseer, and another for members of the Clunies-Ross family on their occasional visits. Both of these remain, though the timber is now rotten and they are uninhabitable. The working gang included a fishermen, who had a shallow-bottomed boat on the lagoon, but the Malays appear to have eaten frigate-bird or booby every alternate day. Over a long period their depredations must have reduced the numbers of these birds considerably. Under present conditions, therefore, the colonies should be steadily increasing in size.

**The Lagoon** The inner shore of the island is a very gradual slope, and the lagoon deepens slowly. At low tide its maximum depth is said to be less than six feet, and if one walks across due west from Pulo Bill the water is no more than waist-high. The bottom, and much of the beach, are a fine, greyish, sandy silt. Towards the eastern recesses this is greyer and darker; and in the north-east corner, where there is a great bank of Pemphis, *Pemphis acidula* Forster, along its edge, the beach is composed of a fine, dark, brownish mud into which one sinks several inches with every step. In a few places, particularly towards the southern end, the sand is replaced by a bare breccia slope, and jagged fragments of the latter occur all down the west side.

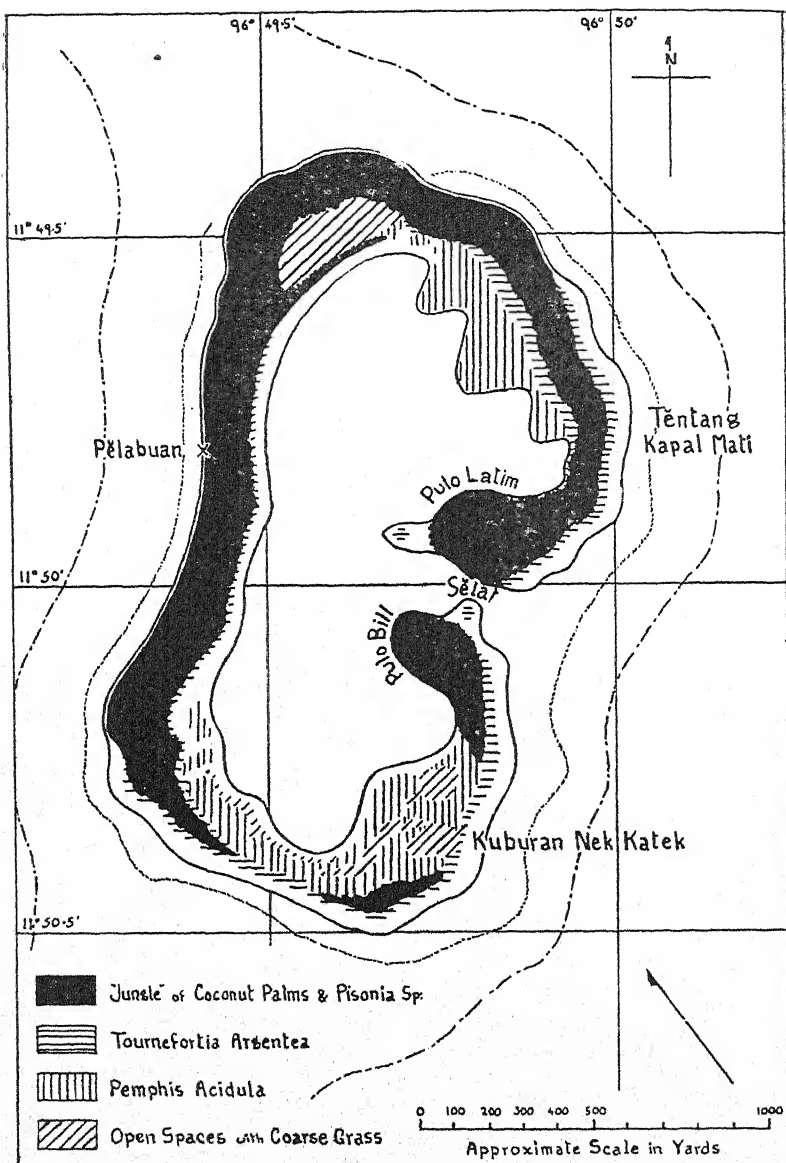
The lagoon does not appear to contain any living coral; but there are large patches of weed, from which dead fronds are washed up in considerable numbers on to the west shore. Here they form a thick band, effectively covering the jagged coral shingle, along the high tide line. This is inhabited by a hermit-crab, *Coenobita rugosus* Milne-Edwards, a species of *Gammarus*, and a wood-louse, but little else. The lagoon itself contains large numbers of Këpiting Rajungan, *Scylla serrata* (Forsk.), reaching a carapace width of about eight inches, and is rich in fish. These are mostly Bandang, *Chanos chanos* (Forsk.), Ikan Puteh, *Gerres* sp., and, above all a small sand shark, yellow-brown in colour with the tip of the dorsal fin black. The latter are abundant in all lengths from nine inches to three and a half feet. They swim round in groups of three or four, each group, for obvious reasons, containing fish of approximately the same size, and the surface of the lagoon round its edge seems to be constantly rippled by their fins.

The extent of the solid, dry land is fairly limited. Along the sides of the island it consists only of a strip about 150 to 200 yards wide. At the corners this broadens to a quarter of a mile. It is also thicker at the entrance to the lagoon, where it forms two inverted lips. These are known to the Cocos-Malays as Pulo Latim and Pulo Bill, though they are not actually distinct islands. There is no real soil. Most of this area (with exceptions which will be noted later) consists of small worn coral fragments, sparingly mortared with a compost of partially decayed vegetable fibres. In many places the surface is entirely covered with these coral pebbles, and the compost itself only appears at a depth of six to ten inches. There are no earthworms, but to a certain extent their work of scavenging and burying vegetable refuse is done by a large red land-crab, *Gecarcoidea humei natalis* Pocock.

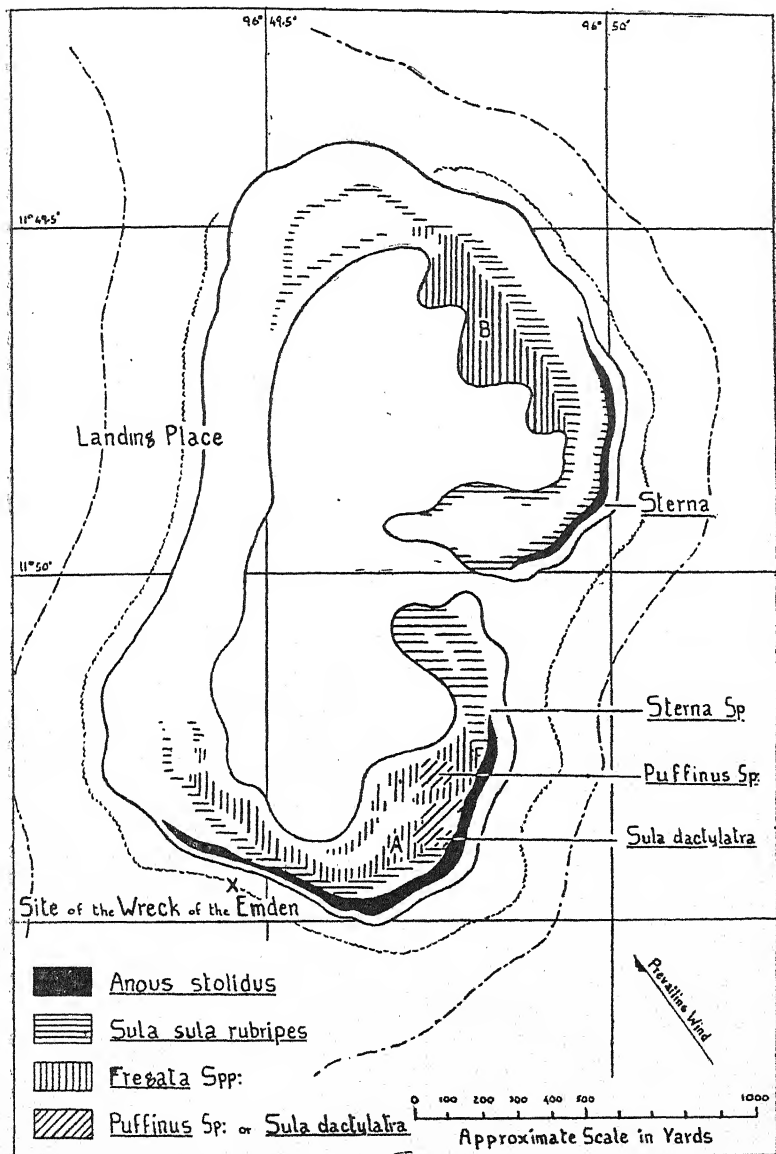
**The Pisonia-Cocos belt.**

Broadly speaking the vegetation falls into four distinct, clear-cut groups. The most important and conspicuous of these (Map 3) begins near the south-west corner of the island, and runs, as a broad belt about 150 yards wide, up the west side, round the north end and down to Pulo Latim, where it spreads out over the greater part of the point. A second patch of it covers Pulo Bill, and there is a third, narrower band near the south-east corner. On the west coast this belt of vegetation rises straight up from the summit of the shingle bank which comprises the beach, but along the east shore it is set back behind a band of stunted, wind-twisted Kayu Sireh, *Tournefortia argentea* Linn. Basically it is made up of Ampol, *Pisonia grandis* R. Br., and coconut palms, of which there are three forms, known to the Malays as Këpala Bësar, Bëtul and Rambai. The *Pisonia* is a medium-sized tree, reaching a height of about fifty feet, with a spreading, uneven crown, slightly-yellowish green leaves, and a smooth, grey bark. Its timber is very soft,





Map 3. A map showing the distribution of the principal units of vegetation on North Keeling.



Map 4. A sketch map showing the distribution of the breeding areas of the commoner sea birds on North Keeling.

and the branches break easily. Towards the north-east corner of the island there is also a little Kayu Dëdap, *Erythrina variegata* Linn., in this area; and in places patches of Gëronggang, *Cordia subcordata* Lamn., but the greater part of the latter has been felled. The scarcity of these two is regrettable, as both have attractive flowers. Those of the former, which only appear in the drier months, when the tree has shed its leaves, are a rich, bright red, while those of the latter, trumpet-shaped, are a fine, clear orange colour.

Seen from the inside, the greater part of this belt is like the interior of an artificial palm-house. It is the only sheltered portion of the island. The air is hot and, by contrast, very still. Overhead there is a high canopy of fronds and *Pisonia* leaves, which, instead of blocking out the light, impart to it a warm, greenish glow. Through it a few stray rays of the sun stab in bright, yellow-white streaks. There is no real under-growth, but the ground is thickly strewn with innumerable chlorotic young coconut palms, whose sickly, yellow-green leaves rise to a height of four to eight feet. No other plants are apparent and, except in the area of Pulo Latim and Pulo Bill, there is no sound apart from the vague scratching creeping of crabs among the the fallen stems. In the region of the two pseudo-islands, the Red-footed Booby, *Sula sula rubripes* Gould, nests in the tops of the *Pisonia* and from them, all day long, there is a constant clattering and squawking, as though monkeys were perpetually quarrelling in the branches.

Crabs are the most conspicuous, and probably the most plentiful, inhabitants of this belt. In addition to the Nipper Crab, *Geograpsus grayi* (Milne-Edwards), and *Gecarcoides humei natalis* Pocock (which, though it also occurs on some of the islands in the main atoll, is so characteristic of the fauna here that the Cocos-Malays call it Këpiting Kiling), there is the Robber Crab, *Birgus latro* Linn., and a large, dark red hermit-crab, *Coenobita* ? *perlatus* Milne-Edwards. The former, which has become nocturnal in its habits, is fairly plentiful, but no more. The latter is abundant. A damaged bird-carcase left lying on the ground will be covered by upwards of an hundred of these crabs in the course of a few hours. They move mostly at night, but by no means only so, and once they have found or scented flesh they will remain by it all through the day. As with *Coenobita clypeata* (Herbst.) on the main atoll, whose place they take, they invariably carry the large, knobbled shell (known locally from its shape as Siput Këpala Viola) of *Turbo* (*Senectus*) *Iajonkairii* Desk.

I found very few species of insects here. There are several Diptera—a long-legged fly, ? *Nerius lineolatus* Wied, which is fairly plentiful, some four species of Muscidae and allied families, and a mosquito *Aëdes* (*stegomyia*) ? *aegypti*. The last is not very com-

mon, although on the main atoll it is, in parts, abundant. A cricket, *Ornebius* sp., occurring among the leaves of both *Cordia* and *Pisonia*, is fairly common. There appears to be only one representative of the Hymenoptera, a long-legged, fawn-coloured ant which is abundant under stones and fallen timber. This last habitat also yielded a cockroach, the larvae of a cockchafer beetle, probably *Onthophagus* sp., and two small weevils. Finally, in July, there was a butterfly, *Hypolimnas* b. *bolina* (Linn.), of which I took a single female, in the wet season phase, in fair condition.

There were three species of spider—the cosmopolitan *Heteropoda venatoria* (Linn.) and two small web-builders—but *Nephila imperatrix* C.K., which is very plentiful on the main atoll, appeared to be absent. There was a small wood-louse, and a terrestrial mollusc, ? *Melampus* sp., but rotten timber and similar habitats yielded nothing further. There seemed to be no centipedes, no millipedes, no termites and no earthworms. Their absence is of some interest as all are present in fair numbers on most of the islands in the main atoll. There are also, as yet, no rats on North Keeling, and I failed to find any lizards although, according to some of the Malays, a gecko has been seen on the island.

It is doubtful if any of the birds occurring on North Keeling can really be said to inhabit the *Pisonia-Cocos* belt. As the fourth map shows, the commoner sea-birds ignore it almost entirely and, with the exception of the Red-footed Booby which nests in the tops of the *Pisonia* trees on Pulo Latim and Pulo Bill, confine themselves to the more open portions of the island. At the same time the three least plentiful sea-birds breed partially or entirely in this region, though they spend the greater part of their time away from it. It is probably most convenient to consider them, and the land-birds, at this point. The former are the Reef-heron, *Demigretta sacra* (Gmel.), the White-tailed Tropic-bird, *Phaëthon l. lepturus*, Daud., and the White Tern, *Gygis alba monte* Math. The three land birds were introduced at the end of the last century, and none are indigenous. They are the Rail, *Rallus philippensis andrewsi* (Math.), the ordinary Domestic Fowl, which has gone feral, and possibly the Christmas Island Thrush, *Turdus javanicus erythropleurus* Sharpe.

The Reef Heron occurs on the main atoll, in both the white and the slate-grey phases, confined for the most part to two small colonies. It is conspicuous, but not plentiful, and I would doubt if there are more than fifty to sixty pairs breeding during the year. Its nest, which is usually built in December or January, is situated in the crown of a coconut palm. One or two very pale blue eggs (42-47 x 33-36 m.m.) are laid, and the young bird flies after about twelve weeks. On North Keeling the Reef Heron is definitely scarce. In January I saw three adults, in the slate-grey phase.

and found one nest, containing a very small chick, in a coconut palm on Pulo Bill. On the second visit I saw only four birds, all in the slate-grey phase, in the neighbourhood of the lagoon.

The existence on these islands of the White-tailed Tropicbird seems to hang on an even more slender thread. Only two nests were found, both on Pulo Panjang, on the main atoll, though birds were observed on several occasions in the vicinity of Pulo Panjang and Pulo Luar. On North Keeling I found a single abandoned nest in a *Pisonia* tree in July. During both visits five or six birds spent the greater part of the early afternoon flying round at a considerable height, calling to each other, over the west coast of the island, but no others were seen. Since this species also, in this habit at least, is very conspicuous—the birds were visible from all the open parts of the island—I think it unlikely that there are more than a dozen pairs breeding there during the year. The reason for their scarcity is obscure. Frigate-birds, when hungry, will bully them for their food, but they cannot be considered as a series menace in the presence of such large numbers of boobies, which are much easier and more profitable victims. On Christmas Island the principal enemy of the genus appeared to be the rats, but there are no rats on North Keeling. There is, in fact, nothing which is likely to molest a bird nesting near the top of a tree. Even the ticks seem to be absent in these higher regions.

The last of the sea-birds nesting in this belt, the White Tern, occurs also in the next region. It is far more plentiful than the two preceding species, and there must be between two and three hundred pairs on the island. It is a lovely, ethereal little bird, with something faintly ghost-like about it. Its body is slender and fragile, the plumage pure white, and the eyes large and dark, with deep brown pupils and black lids. It lays a single egg (40-44.5 x 30-34 mm.), whose shape is an almost perfect oval. Its colour is a little variable, the shell being blotched with greys, mauve-greys and umbers on a background of very light fawn or olive. No nest is built, the egg being placed on the midrib of a coconut palm leaf, or in a slight natural groove in the bark of a horizontal branch. The trees usually chosen are the Cocos Ironwood, *Cordia subcordata* Lamm., or Kayu Sireh, *Tournefortia argentea* Linn. The egg is always laid in the long axis of the branch. The broody bird stands over it, at right angles to it. Great care and deliberation are shown in settling on the egg, and once in position the bird is most reluctant to leave. When they do fly, they invariably depart by dropping backwards off the tree, thereby reducing the chances of knocking the egg with their feet.

During the January visit to North Keeling I found three juvenile birds, with a few fragments of biscuit-coloured down still adhering to the coverts and back, only a week or two off flying.

In July, I saw two eggs and two young chicks. All these agreed with the apparent breeding season on the main atoll. Four of them were in the *Pisonia-Cocos* belt, and the other three among the *Tournefortia* flanking it. On the second occasion I also observed a pair of birds consistently in the vicinity of a large *Pemphis* bush near the south-west corner of the lagoon, but I was unable to find either egg or chick in it.

The Rail also appeared to be by no means confined to the belt of the coconut palms, though most of the birds seen were fairly close to it, and all took refuge amongst the trees. The majority were engaged in turning over the line of dead weed along the west shore of the lagoon, presumably searching for *Gammarus* and wood-lice. When disturbed they made no attempt to fly, but merely ran, very fast, into the undergrowth. I have, in fact, never seen these birds fly more than a few feet from the ground. Then they only took to the air to clear low obstacles. On Home Island the young boys occasionally catch them by chasing them, like fowls, until they run into a corner from which they cannot escape. I found no eggs or nests on North Keeling, but this was rather to be expected as the breeding season on the main atoll begins in August or September and finishes about December. These birds appeared to be fairly plentiful, though elusive. Their only possible natural enemies on North Keeling are the crabs, but the latter, particularly *Geograpsus grayi* (Milne-Edwards) and the large Coenobite, are probably very troublesome.

The domestic fowls, which went feral about forty years ago, are by no means numerous, and seem to be still confined to the west side and south west corner of the island. It is currently believed on the main atoll that these birds, whose immediate ancestors have had close dealings with the human race, are more timid, and less easily approached, than the sea-birds. Unfortunately, like most good stories, this assertion has little basis in fact. They have to be stalked with slight caution, but they are no more readily frightened than any of the frigate-birds or terns. The greater part of their food, like that of the Rails, seems to be gathered from the line of dead weed along the shore of the lagoon. They roost by night on the branches of the *Tournefortia* or, when they can reach them, in the heads of the coconut palms. I failed to find either a nest or young birds on the main atoll or on this island, but they must undoubtedly be resident on both.

The Christmas Island Thrush was liberated on North Keeling at about the same time as the Rail, and is said to have been plentiful there about forty years ago. As far as one can see, it has now disappeared. Neither I nor any of the Malays with me saw any signs of it on either of our visits, and the area of its natural habitat, the *Pisonia-Cocos* belt, is definitely limited. The bird is not

likely to have met with serious interference at its normal breeding site; the ever-present crabs can scarcely have climbed small bushes in search of its nest. Wood-Jones, writing of the period 1905-06, says that it had made itself at home on every island on the main atoll (Wood-Jones, 1921, p. 299). Now it is only present on three, and only on one, Horsburgh, is it at all plentiful. Food, or more strictly the fluid content of the available diet, has probably been the determining factor. On Christmas Island, where free surface water is obtainable in at least parts of the jungle throughout the year, it was found to be feeding principally on insects, of which there was a plentiful supply. Fresh water would not, of course, normally be accessible to it on a coral island. On Horsburgh I noticed that the birds were eating largely of the fruit of the Buah Chëri, *Muntingia calabura* Linn. This tree does not grow on North Keeling, and in 1941 the island did not appear to have any suitable substitute. On the other hand at the time of Wood-Jones's visit men were living there for two to three months each year, and may well have been cultivating a few fruits. Wood-Jones was not a very careful observer, and the statement that this bird had made itself at home on every island of the main atoll may have been based on impressions gained from the larger islands, Horsburgh, Direction Island and West Island, all of which had at least a few Buah Chëri trees on them.

### **The Tournefortia Belt.**

The second of the vegetation groups is composed of a single species, *Tournefortia argentea* Linn., known to the Cocos-Malays as Kayu Sireh. The tree itself is small, seldom rising to a height of more than twenty to twenty-five feet, with the trunk crooked and twisted, and the bark dark and deeply fissured. The leaves, which grow in clusters at the end of the branches, are light green with a lovely silver pile. The flowers small and white, form a thick cluster in their centre. *Tournefortia* grows in a barren, sandy soil, and seems to have a strong liking for wind and sun. On North Keeling, for the most part, it forms a coating, of varying depth, round the edge of the *Pisonia-Cocos* belt. Where the latter is absent, along the south coast of the island, and in the region of Kuburan Nek Katek, it continues the line on its own. Along the sheltered west coast, where the palms rise straight up from the summit of the shingle bank, the *Tournefortia* fringe is thin and intermittent. On the south and east sides of the island, where the wind is stronger and the spray forces the other vegetation further back from the crest, it forms a thick, stunted band, twenty to thirty yards deep. Along the west shore of the lagoon it presents an intermediate stage. It grows as an unbroken line at the feet of the taller trees, forming, as it were, the wall to the glass-house inside, but it is only one or two trees thick. Finally on two sandy, windswept spurs, thrusting out from Pulo



Bill and Pulo Latim, where no other plant seems able to survive, there are small, low battered clumps of *Tournefortia*.

Few invertebrates occur in this zone, although the flowers of the *Tournefortia*, and later the dark, juicy berries, attract a certain number of insects. The two small flies seemed always to be present round them, and the majority of the trees have been invaded by the island's only ant. The Cotton-print moth, *Utetheisa* ? *lotrix* Cr., whose larvae feed on the leaves, was also plentiful. It is an attractive little moth, occasionally flying by day, white, with the hind wings edged with black and the fore wings neatly dotted with black and red. The only crab occurring consistently among these trees is the ubiquitous *Coenobita* ? *perlatus* Milne-Edwards.

A few of the White Terns appear to breed in the *Tournefortia*, and a number of them roost there. As one walks past they fly out in twos or threes, circle round once or twice, and then swoop down to within a yard of one's head. There they stay for perhaps half a minute, their wings beating so fast that they appear like immense insects, while their great eyes stare hard in seeming amazement. When they can no longer maintain their position, they drop away and fly round, coming back for a second and even a third look. At the finish, their curiosity satisfied, they return to their branches or their play. Anthropomorphically speaking they are not especially courageous birds, but they appear to be very inquisitive. Red—a red handkerchief, a red note-book—attracts them particularly, as it does the frigate-birds.

The only other bird breeding in the *Tournefortia* belt is the Red-footed Booby, *Sula sula rubripes* Gould, which is easily the most abundant species on the island. On the occasion of my second visit I formed the opinion that there were between eight and ten thousand feathered birds, of all ages, with a little under four thousand breeding pairs. In January there were several fresh nests, mostly with eggs, in the *Pemphis* bushes near the southwest corner of the lagoon, and a few juveniles, with fragments of down still on the head and neck, towards the east side of the island. Apart from these stragglers, there were no real signs of reproductive activity. In July there were nests everywhere; the majority contained eggs, many of which were fairly well advanced, but a few had young chicks up to about eight or nine weeks old. There was no doubt that, as on Christmas Island (Gibson-Hill, 1947, B.R.M., p. 116), the majority of the birds were adhering to to a definite breeding season. Here it would seem to be a little earlier, with the eggs laid between April and June, instead of between the end of May and the beginning of July.

Some of the nests were in the tops of the *Pisonia* trees on Pulo Latim and, more particularly, Pulo Bill, a few were scattered among

those of the frigate-birds in the *Pemphis* bushes towards the east side of the island, but by far the greatest number were in the *Tournefortia* belt. Their distribution in it was interesting. There were practically no nests on the west side of the island, and none on the north coast (Map 4). Since the prevailing wind is from the south-east, this meant that the majority of the birds had carefully avoided the more sheltered portions of the island. Only those building in the trees at the north-east corner of the lagoon, behind the second frigate colony, could expect to get any protection. It is difficult to see the advantages of the more exposed positions. It may be that the wind gives the adult birds added confidence when leaving or returning to the nest, but one would have thought that a gusty half-gale would have been more of a handicap than a help. On the other hand it may be that *Sula sula* is so naturally gregarious, that it prefers to remain in the vicinity of the other sea-birds rather than branch out on its own. On Christmas Island, where many of these birds were forced to use taller trees, mostly *Gyrocarpus americanus* auct. or *Terminalia catappa* Linn., they frequently crowded into ones in which frigate-birds were also breeding, completely ignoring other, unoccupied trees (of the same species) nearby.

The nest is an untidy, loosely-built structure of dried twigs, occasionally covered with a few dead leaves. It is about twelve to fifteen inches across, and the central depression is shallow, so that if the bird rises too violently it may easily knock the egg off. The egg itself is elliptical in shape (56-62 x 37.5-40 mm.), with the shell, which is always hidden under a coating of lime, thick, rough and bluish-white in colour. Only one is laid, and the sitting bird is very reluctant to leave it.

The newly hatched chick is about five inches long, blind and practically naked. The skin is a dull, fleshy, lead-grey, with the face and beak much darker, almost black, and the feet pink. The older chicks were covered with a white down, short and stubby like lamb's wool in the smallest of them, and long, fine and fluffy in the larger birds. In these the bill and face were pure black, with remainder of the skin a pale grey-blue. Still older chicks had the feet greenish yellow, and the earliest of the dull brown juvenile feathers appearing across the shoulders, along the wings and in a small tuft over the tail. When disturbed these birds, whose nests were mostly between six and ten feet from the ground, squatted forward, shot their ridiculous tail-tufts into the air, and stabbed downwards, from side to side, with their long, pointed and potentially dangerous beaks. The whole movement was done to a slow, steady rhythm—bottoms up, three or four thrusts to each side and then a short pause.

As on Christmas Island, all the breeding adults were in the full white plumage. In addition, in July, birds in the dull grey-

brown juvenile covering were proportionately scarce, and it seemed that here also this plumage is abandoned by the end of the first year, at the latest. Juveniles in the next stage, brown with white mottlings (known to the Cocos-Malays as *Burong Bělorek*) or white with pale coffee-coloured mottling on the back and across the wings (*Burong Bureh*) were plentiful. They did not mingle with the nesting adults, which was interesting, and I found none of them roosting among the breeding birds. They were all settling in the thin band of *Tournefortia* along the west side of the lagoon, where they were so numerous on a few trees that, early in the morning, they appeared like snow on the branches. Even over the open sea the two seldom mix, and one nearly always meets files or small groups composed exclusively of one or the other.

In its mature, white plumage, with the neat grey-black primaries, the rich crimson-madder feet, and the light bright blue bill, *Sula sula* appears an attractive bird. It is a fine sight in flight, and a single, settled adult is most pleasing. A colony of them, however, is a decidedly unpleasant place. Interpreting them anthropomorphically one would say that they are too human: they are greedy, stupid, quarrelsome; and perpetually acting on the assumption that everything done is done in relation to them. They seem quite oblivious of the maxim that "in considering the universe, we are of small importance". When a bird comes down to its roosting place, those on the neighbouring branches immediately behave as if they are in some way threatened, and set up an immoderate cacophony of squawking. The quarrel, once started, is dropped slowly, so that a rookery is seldom at peace. It is possible to thread one's way quietly through the *Pemphis* bushes on which frigate-birds are nesting, crawling close to the ground under the lower branches, without disturbing them, but the moment one is seen by a young booby he takes it upon him to defend the whole colony. When fishing they often fill themselves so full that they are unable to rise from the surface. They come down to a lure dragged in the water readily and then, when struck at with a stick, rise with a great mixture of oaths: but they have, as it were, learnt nothing. They wheel round and come back again. All the boobies lack the natural dignity of the frigate-birds, and of the whole genus the Red-footed Booby is easily the worst.

### **The Clumps of Pemphis Bushes.**

*Pemphis acidula* Forster, the tea-shrub, is an evergreen, growing, under favourable conditions, to a height of twenty to twenty-five feet. Its leaves are small, mid to dark green in colour and with a faint, silky-grey pile, while the flower is tiny with a reddish bud and white petals. The trunk is short and twisted, with a grey-brown, flaky bark. It grows always in the neighbourhood of the seashore, on sandy, corally soil, or even in cracks and crannies amongst bare rock. On North Keeling it forms two broad patches round the

north-east and south-east corners of the lagoon. Here the majority of the plants, though seeming healthy, only reach a height of four to eight feet. The Cocos-Malays give *Pemphis* two names, calling it Kayu Këriting when alive and Kayu Burong when dying.

The *Pemphis* at the north end of the island (Map 3), apart from a few low clumps straggling to the west of the main mass, forms a thick, almost unbroken wall along the side of the lagoon. At high tide the roots of the shrubs are lapped by occasional ripples, while at low tide it is separated from the water by a broad, flat belt of dark, slimy mud. Behind the *Pemphis* lies the *Tournefortia* fringing the main *Cocos-Pisonia* belt, and between the two are a few bare, grassy areas, strewn with dead trunks of *Cordia* and *Pemphis*. The second patch, at the south end of the lagoon, is more open, and consists of a series of broad, low, stunted clumps, mostly only four to five feet high, separated by long strips of coarse turtle grass and a xerophyte, *Sesuvium portulacastrum* Linn. At all points this lies back from the shore. As the *Pemphis* reaches the crest at the sea-ward edge of the island, in the neighbourhood of Kuburan Nek Katek, it grows thinner, leaving ultimately a broad, sandy space, sparsely dotted with grass, which forms the principal breeding ground of the Masked Booby, *Sula dactylatra bedouli* Math.

The *Pemphis* patches appeared to have only one consistent invertebrate inhabitant, the moth *Ophiusa melicerta* Fabr., which, as on the main atoll, was almost abundant. I found a number of larvae, feeding on the leaves of the shrub, and the imago itself, flying occasionally by day, was very conspicuous.

The bird of the *Pemphis* masses is the frigate-bird. Two species breed on North Keeling. They are races of the Least Frigate-bird, *Fregata ariel* (G. R. Gray), and the Lesser Frigate-bird *F. minor* (Gmel.). Their sub-specific status is still undetermined, and series of skins have been sent to Dr. R. C. Murphy, of the New York Museum of Natural History, for comparison with the large collection of material there. On the January visit I found a few juveniles (with white or rufous heads), just not able to fly, scattered amongst the *Pemphis* bushes, but no other signs of reproductive activity. In July the two masses were thickly covered with nests, most of which had sitting birds. In parts the latter were so close together that the long tail of one was only a few inches from the head of the bird behind. On the average there was probably one bird to every twenty square feet of *Pemphis*. The two colonies were approximately the same size, each containing about one thousand to one thousand two hundred nests. The distribution of the species, however, was unequal. *F. minor* subsp. represented about sixty per cent of the northern colony (marked B on the fourth map) and fifty per cent of the southern one (A). From observations on

Christmas Island it appeared as if there the male bird did the greater share of the incubating (Gibson-Hill, 1947, B.R.M., p. 128). Here, though the evidence is not sufficient to be conclusive, nearly half the nests were watched by females.

The nests are small, flat platforms of dried twigs, about twelve inches across. There is no real central depression, and I twice saw birds, rising in a hurry, kick their eggs off as they left. Nearly half the nests contained eggs, mostly in a fairly advanced stage of incubation, and the majority of the remainder young chicks. A few were still empty. In view of the length of the breeding cycle in these birds, there can be no doubt that there is a definite, set season observed by those on North Keeling, and that, as on Christmas Island, they adhere to it fairly rigidly. There cannot have been much more than three months difference between the freshest egg and the oldest chick.

Only one egg is laid, and this, in both species, is roughly elliptical in shape and pure white in colour. The shell, relatively thin, is less than .33 mm. thick. Those of ten examples of the *P. ariel* subsp. ranged from 58-61 mm. in length and 40-41.5 mm. in breadth; ten of *P. minor* subsp. from 62-67 mm. by 40-47 mm. Several of the nests contained newly hatched chicks. In the earlier stages the species are indistinguishable. In both the young bird is about five inches long, half-blind and practically naked, when it emerges. The skin is a light grey-blue, the bill slightly pinkish towards the tip, with the extreme tip grey. Superficially, apart from the pale colouring of the bill and face, they resemble the young of *Sula sula*, but there is a definite difference. This lies in the down, which at this stage is still preparing to break through the skin in full force. In the boobies the whole chick becomes covered with a full, long white fluff before the earliest feathers (in the order rectrices, remiges, scapulars) appear. In the frigates, the mantle feathers (in four patches, one over each shoulder and one on each side of the midline) begin to thrust through almost as soon as the down. They can be seen, while the chick is still naked, as short, blackish rods lying immediately under the surface of the skin. As a result one never finds a young frigate-bird entirely covered with down alone. A chick 196 mm. long, which I examined, had scapulars of 10 mm., of which about half was beyond the end of the sheath. In a larger chick, just under a foot in length, the shoulder feathers were over three inches long.

The largest of the young nestlings seen on the July visit were fifteen to sixteen inches long. They were entirely covered with a fluffy white down, except on the tips of the wings, the forehead and the back. The longest of the dark brown, juvenile mantle feathers formed a plaque (the four patches having united) which entirely covered the latter region. Normally they lie flat along the back,

but when the wind catches them their ends lift, and they curl upwards like leaves. Juvenile feathers were also appearing over the forehead and cheek, reaching back as far as the level of the eyes. These provide the earliest indication of the species. In *F. ariel* they are rufous coloured. In *F. minor* they are paler, almost white. Both the rectrices and wing-coverts had also begun to thrust through the skin. The latter appear before the former and before the remiges, so that in the frigate-bird the order is scapulars, wing-coverts, rectrices, remiges, the reverse of that occurring amongst the boobies. There is another difference. In the frigates the coverts precede the remiges, and in addition the earliest, and for some time the longest, coverts are those over the outer secondaries; the boobies it is the primaries, and later their coverts, which appear first.

Very young chicks require the shelter as well as the protection of their parents. When abandoned they usually lie spread-eagled on the nest. If disturbed they raise their heads to cheep, half in irritation and half in supplication, but soon drop them again. Older nestlings sit hunched up, with the bill about horizontal, the head down on the shoulders and the tail slightly higher than the base of the neck. Some of them seem to nod asleep in this position, but the majority sleep with the head turned and the beak resting over one scapular. If an adult bird is by them they generally sit up and survey the world with it. When annoyed they snap their bills, producing a clapping sound a little like flat wooden castanets, and emit a series of muffled yapping notes. The whole performance is somewhat half-hearted and they are by no means pugnacious birds. When soliciting for food they sway backwards and forwards, open and close their beaks and whimper. If the parent does not feed them at once, they grow indignant, the movement becomes more rapid and threatening, and the note higher in pitch. Ultimately, in a large chick, the latter may finish as a long, rat-like squeak.

The frigate-bird is something of a scavenger and, though nominally a fish-eater, it is a little inclined to eat what it can, when it can. The young birds, as far as my experience goes, are always fed on fish, usually flying-fish, *Exocoetus* sp. or *Cypsilurus bahiensis* (Ranz.), stolen from the boobies, or occasionally caught in their passage above the water. The food is swallowed by the adult bird, and later regurgitated on its return to the nest. The latter process takes two to three minutes. The fish is brought up as far as the top of the oesophagus, and the chick puts its head and bill into its parent's mouth to meet it. In older chicks the business is accompanied by much squawking and flapping on the part of the nestling; the larger the youngster, the more the noise. Sometimes the adult bird is at first unable to bring the fish up, and it will then sit, just out of range, waiting until it is ready. Two or three attempts may be necessary, and I have seen birds wait as long as half an hour. The chicks appear to be fed only once a day. In captivity they have an almost phenomenal appetite—for a time—



but I do not believe that they receive as much in the wild state, as they will take when the supply is unlimited.

The diet of the adults includes the eggs, or very young birds, of their own species. Even those in the adjacent nests are not immune from attack. On several occasions I saw birds which had been frightened from their own nests, wheeling round and swooping straight back in an attempt to empty their neighbours'. In consequence of this ever-present threat small chicks are seldom left unattended for long. They are guarded far more carefully than those of either the tropic-birds or the terns. At the same time, apart from these and other piratical habits associated with its quest for food, the frigate-bird is a gentle, almost timid, creature. Their colonies are quiet and well-ordered. Brooding birds, with none of the cantankerousness of the boobies, pay little attention to the movements of those round them, except in the case of a mass exodus. Then, after a hasty look to ascertain its cause, they usually follow. Panic spreads rapidly through the community, and the birds rise, one after another, in a steady stream. Generally they return fairly quickly to their nests, taking up again their old pose, with the body and long tail spread horizontally across the tops of the *Pemphis*, the head sunk down on the shoulders and one wary eye half open. In this position, all through the day, with the full heat of the sun on them, they appear to doze but never to sleep. Always there is the feeling, if not the actual fact, of that one eye half open.

**The Open Spaces.** The open spaces actually within the vegetation areas are very limited. There are several small strips in the *Pemphis* belt, where the shrub itself is deficient, and the flora is reduced to a coarse grass or the *Sesuvium*, but there are only three patches which deserve independent description. Two of these are in the south-east corner of the island, in the region of Kuburan Nek Katek, and the other in the north-west. Considered as a whole these areas have only one consistent invertebrate inhabitant, a small moth, *Zinckenia nigerrimalis* Hampson. This species, which is very plentiful, is nigger-brown, with two thin, white, wavy lines across each forewing and one across each hindwing. In addition the land hermit-crab, *Coenobita* ? *perlatus* Milne-Edwards, always arrives if flesh is left for it, though it is not at other times apparent.

The largest of these areas lies at the north-west angle of the island. Here the coast-line forms a blunt, indented nose, while the lagoon shore curves in, cutting across the corner. The *Pisonia-Cocos* belt follows the former, unwidened, while a thin line of palms and *Tournefortia* continues along the latter. Between the two is a broad bare patch of about twelve acres, covered for the most part only with a coarse turtle-grass, and thickly strewn with the bleached trunks of dead *Cordia*. Towards the west there are slight additions to the flora, and I found a rank mass of *Gmelandina bundoc* Ait., and several patches of *Turnera ulmifolia* Linn. Towards the east



the ground is damper and, as one approaches the *Pemphis* clumps, the grass becomes sparser: its place being taken by *Sesuvium portulacastrum* Linn., a small, pink-flowered xerophyte, or bare patches of dark, slimy mud. In this area, and away among parts of the *Pemphis*, are numbers of holes made by a semi-terrestrial crab, *Cardisoma hirtipes* Dana, known to the local Malays as Kēpiting Balong. It reaches a carapace width of about six inches, and is edible, though its flavour is inferior to that of the Christmas Island specimens. There are, apparently, no birds inhabiting this area, though *Sula sula* was breeding fitfully in the *Tournefortia* round its edge. It may, in season, see the nests of the Rail, but this is only conjecture.

The two southern patches are barer and less protected. The soil is lighter and in parts it is almost pure sand. The vegetation is reduced to a coarse grass, which grows unevenly, forming thick tussocks with natural hollows between them. In places even the grass is absent. The smaller of these patches, covering about three acres, faces in towards the lagoon and grassy alleys run through the *Pemphis* between it and the inner shore. It is honey-combed with holes, so that walking is both difficult and dangerous. Originally they seem to have been made by crabs, but now they are inhabited by a shearwater, *Puffinus* sp., known to the Malays as *Burong Tanah*.

At the time of January visit the birds were approaching the end of their breeding season. A number of the holes were empty (I was only able to examine them by day), and in the few cases where chicks were present they were fairly well developed. A young bird which I took back with me was nearly twelve inches long, plump, with feathers sprouting along the back, well-advanced shoulder-patches and both coverts and remiges appearing on the wings. It was a placid youngster, but it seemed to miss the comforts of its burrow and, though liberally supplied with food, it died after a few days.

In July there were no birds present by day or night. This was unfortunate, but it was only as one had expected. From late August to the end of February *Puffinus* can be found fishing in the open sea midway between North Keeling and the main atoll. It is not plentiful, but ground-bait thrown from a sailing boat will always attract a few birds. During the intervening months only an occasional specimen can be seen. It seems, therefore, that the shearwater arrives about September for the nesting season, and, at the finish of it, like the Noddy, disappears again into the wilds of the ocean.

The other clear space in the neighbourhood of Kuburan Nek Katek is a little larger, and must have an area of four to five acres.

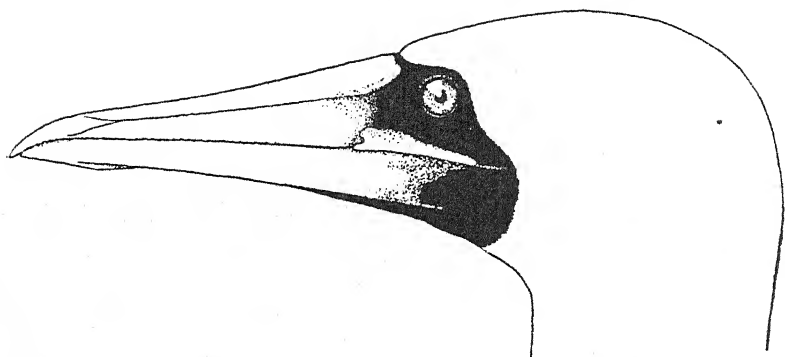
The grass covering it is much sparser, and there are a number of bare, sandy patches. It lies nearer to the seaward shore of the island, but it is separated from the summit of the shingle bank by a band of dwarfed, wind-twisted *Tournefortia*, about four feet high. Several open channels run through this belt. In them, on the occasion of the January visit, I found a few nests of the Brown Booby, *Sula leucogaster plotus* (Forst.), partially sheltered by the bushes. In all cases the sitting birds were unduly timid, and flew while I was still some distance away. The nests contained two eggs, or one young chick. By July the juveniles had disappeared.

This second bare area is the principal breeding ground of a third species of booby, *Sula dactylatra bedouti* Math., which is by no means plentiful. In January I found seven nests, three with eggs and the remainder with single, half-downy chicks. In July there were twenty-four nests, all containing eggs. In addition there were eight nests scattered along the south and south-east coasts, on the outside of the *Tournefortia* fringe. From observations made on other species on Christmas Island, the reproductive cycle, from the completion of the nest to the first flight of the youngster, seems to take about twenty-two to twenty-four weeks. This means that most of the breeding birds must have been active on one of my two visits. It would therefore appear as if the total number of pairs on North Keeling cannot be more than fifty. By the same argument, the majority can be said to follow a definite breeding rhythm, with the peak period for egg-laying in and about June.

In all cases except one, where eggs were present the nest contained two. They are roughly ovoid in shape (ten ranging from 66.5-69 x 43-45 mm.), and covered with lime. The shell, under the lime, is a light, watery blue colour and about .65 mm. thick. The nests are slight, but definite. They consist of a shallow, circular depression, about twelve inches in diameter and perhaps two in depth. In most cases a number of small, bleached fragments of coral had been trodden into them, forming a lining. In one nest there were over twenty of these pebbles, and in another eighteen. A few also had short lengths of twig. Round the depression was a ring of bare soil, about nine inches wide, from which everything but the toughest grass roots had been plucked. The surface of the soil itself was finely but shallowly pitted, as though the birds had been pecking at it. Such guano as had been ejected lay beyond the edge of the ring.

All the nests were guarded by one bird, and a number by both. On these occasions, if undisturbed, *Sula dactylatra* stands immobile for long periods, gazing straight in front with an imposing, dictator-like vacuity. Unfortunately the effect is marred a little by the colouring of the face, which has a slightly ludicrous appearance.

The general plumage is white, with the flight and tail feathers a dark nigger-brown. The facial skin is pure black, with a bright yellow pupil to the eye and a yellowish bill. It suggests, as the trivial name implies, that the booby is dressed up for a harlequinade. In breeding birds the two sexes can be distinguished easily. The females, as they stand, can be seen to be a little larger in the body,



Head of a male Masked Booby, *Sula dactylatra bedouti* Math., taken on North Keeling.

appearing stouter and more placid. In addition the feet are lead-grey, like those of the juvenile birds, as opposed to the full earthy olive colour of the males. During the breeding season at least the bill also is different: in the male it is yellow with a faint suggestion of greenish grey; in the female it is about the same shade at the tip, but much greyer and duller at the base.

Few of the birds were actually sitting on their eggs: those that were appeared to hold them under the great webs of their feet. The remainder were standing close to their nests, so that the eggs were shaded rather than covered. When approached they waddled into the slight hollow, and proceeded to tuck the eggs in under the feathers of their breasts. Then they lowered themselves into a sitting posture, with their wings held loosely a little away from their flanks. In this position they showed their anxiety by slowly nodding their heads and striking downwards, first to one side and then to the other, with half-open beaks. They made no further move, and no sound, unless one approached much closer. Then, usually after emptying their stomachs, carefully ejecting the fish outside the neat, bare ring, they launched into the typical attack. The noise made on these occasions was of considerable interest, in that, unlike *Sula sula*, it differed with the sex of the bird. In the male it was a shrill hiss, which almost became a whistle. In the female it was a great trumpeting quack, full of righteous indignation and bravado.

Except when definitely molested, the Masked Booby seems to be commendably silent. The only other occasion on which I heard these birds make any sound was during what must have been part of the courting display. Here the note, though showing the same basic difference in the two sexes, was softer and more pleasant: it could hardly have been called caressing but it was definitely less harsh. The female, with an expression of studied indifference, was standing close to the selected nesting site, which was already a slight depression in the ground. In it there were three bleached coral pebbles. The male bird strutted up and down a short distance away. Occasionally he turned towards the female and whistled, rather pathetically, but she took no notice of him. Then, after a time, he found another small fragment of coral, and stepped slowly up to her with it. Arriving at the nest, he placed it as a peace offering, after several false starts, on the ground in front of her, but he was still ignored. In despair he whistled again, almost whimpered, and then turned to walk away. As he went the female broke her silence, quacking three times, and picking up the pebble. This brought the other bird back, and the two gently rubbed their bills together until, after a little bowing and more whistling, he moved and stood by her side. There they remained, placidly gazing in front of them. During one of the more intimate passages, the pebble dropped, and was completely ignored. It lay close to the nest but not in it. There was nothing to suggest that it was regarded as building material at the time, but undoubtedly as the sitting birds clear the bare ring round them, a few of the forgotten gifts are tidied into the nesting hollow.

**The Sea Shore.** The outer shore of North Keeling consists of a fairly steep bank rising from the high tide level to a height of ten to fifteen feet. It is lowest and least steep towards the north-west corner of the island, and highest towards the south-east. On the north and west coasts, as already stated, the *Cocos-Pisonia* belt of vegetation grows straight up from its summit. On the other two sides the trees lie back behind a shield of stunted, wind-twisted *Tournefortia*. This is itself separated from the crest of the slope by a band, twenty to forty feet wide, of grey, clinker-like coral-shingle, which emits a metallic tinkle as it rolls behind one's feet. The outer edge of this bare, dead strip is raised slightly above the remainder. Behind this ridge rests much of the flotsam which reaches the island. There were planks and fragments of many timbers, long sections of barnacle-encrusted bamboo, coconuts, seeds from *Barringtonia* (*asiatica*, *conoidea* and *racemosa*), *Cordia*, *Guettardia*, *Inocarpus*, *Terminalia* and *Thespesia*, shells, empty bottles and even an unbroken electric light bulb.

Along the sheltered sides of the island the shore is composed partly of coral shingle, washed and bleached to a glowing white, and partly of patches of pale sand. These latter areas are inhabited

by a stalk-eyed crab, *Ocypoda ceratophthalma* (Pallas), and it is here that turtles, mostly *Chelone mydas* (Sieben.) with an occasional *C. imbricata* (Linn.), are said to lay their eggs. When they do, it is no doubt much appreciated by the crabs: as I found on Christmas Island, they are partial to young turtle. They catch them at night, on their way to the sea, and kill them rapidly and neatly, thrusting one arm of the great chela through the posterior wall of the orbit and closing the claw smartly, thus crushing the brain in the region of the temporal lobe. They begin their meal by eating the head. Two other crabs, both Coenobites, *Coenobita rugosus* Milne-Edwards and *C. perlatus* Milne-Edwards, are abundant among the shingle on these slopes, particularly towards their summits.

On the south and east coasts the bank is composed almost entirely of coral-shingle, white or light sand-coloured and, as elsewhere, glowing fiercely in the rays of the full sun. At the top of the crest, where it lies out of reach of the majority of the waves, it is greyer. Further back it passes into the clinker belt. Here the slope is almost devoid of life. *Ocypoda* is absent, and the two Coenobites are much less plentiful. In places, where its foot is washed by the sea, *Grapsus grapsus tenuicrustatus* (Herbst.), a swift-running crab known locally as Këpiting Tërelek, may venture on to it from the rocks of the reef, but this occurs infrequently. Tërelek is eaten by the Malays, who spice it and fry it in coconut oil; treated thus its flesh makes a very good dish.

The crest of this ridge, especially when the wind is driving a fine salt-spray over it, appears to be a favourite roosting ground of the Noddies, *Anous stolidus pileatus* (Scop). They perch in a thin line along its top, all facing out to sea and enjoying their bath. In temperament the Noddy is anxious and fidgety, and easily frightened into flight. Even the soothing effect of its shower does not seem to calm it. In appearance, particularly in fresh plumage, *Anous* is a dapper little bird, with a sombre, correct neatness that has about it something of the air of an old-fashioned suburban bank clerk. The general colour is a deep sooty-brown, slightly paler and greyer on the throat and under the wings, and darker, nearly black, on the flight and tail feathers. Across the forehead is an almost white patch which deepens to lavender-grey over the crown and finally merges into the body colour in the occipital region.

In January their nests, all containing eggs, were plentiful on the flat, bare shelf between the summit of the ridge and the beginning of the vegetation (Map 3). In July the only signs of reproductive activity were a few juveniles with slight fragments of down on the belly and wings, which flew with difficulty. It would therefore appear as if there is a definite breeding season, as on Christmas Island, but that here it is much earlier, the peak of the egg-

laying period being from late December to February, instead of from May to June. This suggestion of a fairly strict season is supported by other evidence. From December to June these birds are plentiful in the open sea between North Keeling and the main atoll. During the remaining months they are scarce, and it is possible to search all day without seeing a single example. In addition in 1941 there was a small colony of Noddies breeding in the tops of the coconut palms at the east end of Pulo Panjang. Most of these birds had laid by the end of January, and all had finished and left the island by June.

On North Keeling the Noddy builds no real nest, but places a single egg in a suitable depression amongst the coral shingle, or among the tufts of grass lying, in parts, behind it. The hollow may contain a few dried leaves of *Tournefortia*, but a lining is not usual. The egg itself is roughly ovoid (ten varying from 50-54 by 34-37 mm.), slightly more pointed at one end. The colour ranges from dirty white to very pale fawn, with a few light grey or pale purplish grey blotches, and fine or coarse, umber or dark umber, markings; the latter are mostly at the broader end.

One other species of tern also occurs on this shelf, but its breeding ground appears to be very restricted. It is the Sooty Tern, *Sterna fuscata nubilosa* Sparrrn, known locally as Burong Dali. In January I found five single chicks, passing from the downy to the juvenile plumage, in the two areas marked on the second map. There were no signs of a nest, the young birds resting in natural hollows in the coral shingle. According to the Malays, no nest is built and the egg is placed directly on the ground. Only about twenty adult birds were seen. In July I saw only three, though the species became more plentiful again later, and from mid-September onwards it was noted on a number of occasions in the open sea between North Keeling and the main atoll.

On the occasion of the July visit I also took a single adult male of the Bridled Tern, *Sterna anaethetus* Scop., which was in company with the three Sooty Terns. According to my boatman, who claimed to be able to distinguish the two birds in the field, though he used the same name for both, it also breeds on North Keeling, in company with *Sterna fuscata*. It is possible that it does do so, but I failed to find any confirmatory evidence, and to the best of my knowledge saw it on only one other occasion. It, and not the Sooty Tern, is nevertheless the species which Chasen records from these islands in his Handlist of Malaysian Birds (1935, p. 47). Unfortunately I cannot find the evidence on which he based his reference. There is no specimen of the Bridled Tern from these islands in the Raffles Museum Collection, and Wood-Jones notes only the Sooty Tern, (*Sterna fuliginosa*, 1912, p. 338 = *S. fuscata*).



The scarcity of the Sooty Tern, on both occasions, is a matter for comment. In the opinion of the local Malays, who are very partial to its eggs, it was formerly plentiful; though this suggestion is not supported by Wood-Jones, who describes it as breeding "but not in very great numbers" (1912, p. 338). It is said to have nested in two fair-sized colonies at the points where I found the five solitary chicks. Eggs were obtained sometime between the end of November and February, but the exact date seems to have been forgotten. There are two possible explanations. It may be that the birds are in fact not really plentiful on North Keeling (possibly as a result of interference from the land-crabs), or they may be numerous, but absent at the end of January and the beginning of July (in 1941 at least). In most other islands where they nest, they are known to disappear into the open sea in the intervals between the seasons, like the noddies and the shearwaters. It is therefore possible that November is the normal egg-month, and that most of the birds had finished breeding and left shortly before my first visit. Unfortunately there is no data available from strictly comparable islands. In the north-western portion of the Indian Ocean the normal period would seem to be round the time of the July visit, when no nests were found. *Sterna fuscata* is said to breed on the Seychelles from June onwards, with the young birds leaving by the end of October (Vesey-Fitzgerald, 1941, p. 518). In 1942 Major North stayed on Mait Island, in the Gulf of Aden, from 22-26 November, and found no evidence of breeding during this period, though it is known from the island (North, 1916, p. 500). An alternative possibility is that they are following a regular rhythm on North Keeling with a span of only nine or ten months instead of twelve. According to various observations this occurs on Ascension Island, in much the same latitude in the south Atlantic. It inevitably moves the date of the nesting season forward, so that it is two to three months earlier each year (Murphy, 1936, pp. 1126-1127). Unfortunately it is not usually possible to visit North Keeling between the middle of February and the beginning of November, but if this state of affairs is also occurring there, the breeding period will continue to rotate until within a few years it will again fall in December and January.

The remaining species found nesting in this zone are the two boobies *Sula dactylatra*, the Masked Booby, and *Sula leucogaster*, the Brown Booby, which have already been mentioned. The latter, a deep chocolate-brown bird with a neat white breast, is by no means plentiful. The normal nesting site is at the back of the shelf, almost, but not quite, in the shelter of the *Tournefortia*. It seems, as on Christmas Island, to have no rigid seasons. Eggs (paired) and chicks of varying ages (always single) were found in both January and July. The nests on North Keeling were medium-sized, three to four inches high and about two feet across the base. They appeared to be built almost entirely of twigs and dead leaves from



the *Tournefortia*. Ten eggs were measured: they ranged from 51 to 63 mm. in length, and 36.5 to 44 mm. in breadth, with the shell about .5 mm. thick. The latter, which was a light blue-green, was covered with a thin coating of dirty, stained lime.

One other bird was seen in this region, towards the south-east point of the island, but, though it was observed on both visits, there seemed no reason for supposing that it was breeding on North Keeling. It was a small wader, the Turnstone, *Arenaria i. interpres* (Linn.), occurring in a flock of about twenty. It has also been recorded, as a stray, on the main atoll, but not on Christmas Island.

**The Fringing Reef.** North Keeling is entirely surrounded by a broken, irregular fringing reef, except at the north-west corner. Like the shingle bank it is narrower on the sheltered sides of the island, and broader on the exposed sides. On the east coast it is continuous across the mouth of lagoon, and forms there a wide bar, which effectively blocks the entrance. Much of the reef is partly exposed at low tide, but, owing to the strong seas which are usually running, examination is difficult. The only crabs collected from it were Terelek, *Grapsus grapsus tenuicrustatus* (Herbst.), and two small hermit crabs, *Calcinus elegans* and *C. herbsti*, but there are doubtless a number of others. There is little sign of living coral in or on the reef, and it appears to be composed almost entirely of breccia and coral-rock. The former, in particular, lies in great, flat sheets running seaward for about an hundred yards from the south-east point.

Over the outer edge of the fringing reef there is, on the west coast at least, a broad, gently-sloping, sandy-bottomed shelf, slowly dropping from a depth of about a fathom and a half. Both this area and the outer portions of the reef are very rich in fish. *Balistes*, *Chanos*, *Epinephelus*, *Lutjanus*, *Pseudoscarus*, *Scarus*, *Thynnus* spp. and several mullets are all abundant. The Green Fish, *Pseudoscarus* sp., are so plentiful that, in suitable places, it is possible to catch over three hundred pounds in about thirty minutes. The Scaridae, in several multi-coloured species, are even more numerous. Also, in the stiller water outside the line of the surf, there is a shark, which again is abundant. In colour it is grey-brown on the dorsal surface and dirty white on the ventral, with the paler colour running up into the centre of the dorsal portion of the caudal fin. It is said to reach a length of about twelve feet, and as one looks over the side of the launch, while waiting to land, one can see the great bodies rolling idly in the water underneath.

### Acknowledgements

I am indebted for my first visit to North Keeling to the late J. S. Clunies-Ross, then owner of the Cocos-Keeling Islands, and for the second to Captain (later Lt.-Colonel) Koch, of the Ceylon Garrison

Artillery. On both occasions extensive collections were made of the birds and other elements in the fauna; the range and quality of these are entirely due to the assistance afforded me by Sakmat, a Cocos-Keeling Islander who worked as my boatman during my stay on the main atoll. A more detailed account of the material collected, with references to its taxonomic significance, will appear in a Bulletin of the Raffles Museum at a much later date.

The first draft of this paper was prepared on Pulo Tikus (Direction Island) in the Cocos-Keeling group in August and September, 1941. I owe its preservation entirely to Mr. T. D. Rée, clerk to the M.B.R.A.S., who guarded it zealously throughout the Japanese occupation of Singapore. The passage of time, and the appearance of other papers in the intervening period, made a number of minor alterations advisable, and I am most grateful to Mr. Chew Choo Seng for typing the amended version.

### References

A selected bibliography of the literature relating to the Cocos-Keeling Islands as a whole is given at the end of my *Notes on the Cocos-Keeling Islands* (J.M.B.R.A.S., Vol. 20, pt. 2, 1947, pp. 140-202). References to North Keeling based on personal observations occur in,

GUPPY, DR. H. B. "The Cocos-Keeling Islands", three papers in the *Scottish Geographical Magazine*, Vol. 5, 1889, pts. 6, 9 and 11.

WOOD-JONES, F. *Coral and Atolls*, second edition, 1912.

The following publications are also cited in this paper, in addition to the three given above,

BETTS, F. N. "The Birds of the Seychelles, II, the sea-birds...." *Ibis*, July, 1940, pp. 489-504.

DARWIN, CHARLES. *Journal of the Voyage of H.M.S. Beagle*, 1842.

GIBSON-HILL, C. A. "Notes on the Birds of Christmas Island", *Bulletin of the Raffles Museum*, No. 18, 1947, pp. 87-165.

MURPHY, DR. R. C. *Oceanic Birds of South America*, 2 vols., New York Museum of Natural History, 1936.

NORTH, M. E. W. "Mait Island—A Bird-rock in the Gulf of Aden", *Ibis*, Vol. 88, 1946, pp. 478-501.

VESEY-FITZGERALD, D. "Further Contributions to the Ornithology of the Seychelles Islands," *Ibis*, 1941, pp. 518-531.

### Appendix I—Notes

#### (A)—THE NAME "COCOS-KEELING"

Unfortunately there is still no complete agreement on the name of the islands. As stated in the text the northern island has been called *Keeling Island* or *North Keeling* fairly consistently since its assumed discovery by Captain William Keeling. The name most frequently given to the main atoll is *Cocos*, which appears in print as far back as Dampier's *A New Voyage Round the World* (1697). The two were first united on a map by Horsburgh, who coined for them the name of *Cocos-Keeling Islands* in 1805. This title is used throughout the Colonial Reports, as "presented to both Houses of Parliament by Command of Her Majesty, March, 1897," and in the subsequent annual reports up to 1904, inclusive. During this period, however, the Ross family used the dysphonic name of *Keeling-Cocos*, and the Straits Settlements Ordinance (No. 84) incorporating them in the Settlement of Singapore begins "From and after the fifteenth day of July, 1903, the Cocos Islands, including the Northern Island, otherwise called the North Keeling Island..." The Eastern Archipelago Pilot, Vol 2, produces a new variant, and refers to the group as the *Cocos or Keeling Islands*: this name is also used in the recent ordinances of the Government of Singapore. Captain Slocum (*Sailing Alone Around the World*, 1900) follows the Clunies-Ross family and calls them the Keeling Cocos Islands, but the majority of the travellers and naturalists of this period, including H. O. Forbes (1885), Dr. H. B. Guppy (1889) and in most instances F. Wood-Jones (1909 and 1912), refer to the group as the Cocos-Keeling Islands. As this name can also claim priority, it is used in my previous paper (1947) and again here.

#### (B)—WILLIAM KEELING

See *Notes on the Cocos-Keeling Islands* (J.M.B.R.A.S., Vol. 20, pt. 2, 1947), text pages 145-146, and Bibliography pages 195-196.

#### (C)—THE WRECK OF THE "EMDEN".

In August, 1914, the German light-cruiser *Emden*, of 3,592 tons, commanded by Captain von Müller, was in eastern waters.

Two days after the outbreak of war she sailed from Tsing-tau, in China, with instructions to cause as much damage as she could to allied shipping in the Indian Ocean, before her inevitable destruction.

Her career was short, but spectacular. On September 22nd she shelled Madras from the sea, setting fire to two oil tanks with the subsequent destruction of 500,000 gallons of kerosene. During the next five weeks she accounted for over fifteen allied merchant ships in the Bay of Bengal, and then on October 28th appeared off Penang. She blew up a Russian cruiser in the harbour, with a loss of 86 lives, before the majority of the crew could even get back their boat from shore leave. On her way out she sank a French destroyer, and in spite of the fact that the remaining warships were preparing to turn their guns on her, von Müller lowered boats to pick up the survivors.

By the beginning of November the *Emden* had destroyed over £2,000,000 worth of allied shipping and cargos, and had nearly seventy armed vessels searching the Indian Ocean for her. Early on the morning of November 9th she appeared off the Cocos-Keeling Islands, and sent a landing party of three officers and forty-two men ashore to dismantle the cable station. While they were at work the Australian cruiser *Sydney*, of 5,400 tons, which had been summoned by wireless, came up with her. The *Emden's* gunnery was excellent, and her opening salvo scored a direct hit on the *Sydney*, but she was no real match for the larger ship. Within two hours she was out of action, and hopelessly disabled. It was then about noon, and the *Sydney* left her to chase a captured merchantman which had been acting as her escort. On her return, about 4.00 p.m., she found the *Emden* still flying her colours, but unable to move. The *Sydney* signalled to her to surrender, but received no answer, and finally fired several further rounds at her. Only then did von Müller strike his flag. By this time the *Emden* was blazing furiously amidships, and in an attempt to save as many of his crew as possible he drove her on to the reef fringing the south coast of North Keeling. This is the weather side of the island. It would have been better to have beached her near the spot known as Pëlabuan, but the *Emden's* steering gear had been damaged early in the encounter, and it is probable that he followed the only course possible. About a third of the men still on board when the *Sydney* began her attack are believed to have been killed in the action, or to have died shortly afterwards.

The majority of the men who succeeded in getting ashore were taken off the following day by the *Sydney*. A few refused to surrender and hid themselves. Owing to the difficulties of landing through the surf the *Sydney* was forced to leave them. The island has only two brackish wells, and no edible fruits in appreciable

quantities other than the coconut. J. S. Clunies-Ross was in England at the time, and his brother, whom he had left in charge of the main atoll, lacked authority to visit the island. The following October parties were put ashore, but by then the men were dead and their bodies merely sun-bleached skeletons. The remains were buried on the crest of the shingle ridge overlooking the wreck, except for two skulls which Clunies-Ross took back to Pulo Selma, and mounted on silver bases to stand on a table in the entrance hall of his house.

From October, 1915 to January, 1916, the islanders worked on what was left of the German ship. A cable was strung from a windlass at the top of the shingle bank to the hulk, and she was stripped of everything that was detachable and portable. Even the crest from her bridge, and her bell were taken. The spoil included a great many bottles of aerated waters and between six and seven hundred tins of corned beef, salmon and sardines. The latter gave the Malays a feast of "flesh" which they are never likely to forget. Certain of the heavier pipeces of metal that were removed from the ship, including water tanks and boiler-tubes, could not be taken off North Keeling in safety, and they were left on the beach to rust. The following year no attempt was made to work the ship. Shortly afterwards she slipped back into deeper water. All that could be seen of her in 1941 was a patch of broken water beyond the edge of the fringing reef.

In 1918 an Australian gun-boat visited Cocos, and, on behalf of the government, claimed the salvage from the wreck; but she appears to have taken little apart from the bell, the crest and the two skulls. The former were deposited in the Sydney museum, and later given to the second *Emden*. The latter were buried at sea with full naval honours.

The second *Emden* paid a courtesy visit to the Cocos-Keeling Islands in 1931. According to local tradition the officers were met on landing on Pulo Selma by a group of islanders wearing the remains of German naval uniforms salvaged from the wreck. There may be at least an element of truth in the story: there were still several caps with naval badges on them in the kampong in 1941. While they were at Cocos-Keeling the Germans put a small party ashore on North Keeling to erect a wooden cross over the graves of the sailors who had been buried there. It was cut down a few years later, but in 1941 it was found to have been partially reconstructed, probably by a member of the party which had placed the store of oil and petrol on the island during the previous year.

## Appendix II—Faunal Lists

## (A)—THE BIRDS BREEDING ON NORTH KEELING IN 1941.

- \**Gallus gallus domesticus* (Linn.)—The Domestic Fowl.
- \**Rallus philippensis andrewsi* (Math.)—The Land-Rail.
- Sterna fuscata nubilosa* Sparrn.—The Sooty Tern.
- \**Anous stolidus pileatus* (Scop.)—The Noddy.
- \**Gygis alba monte* Math.—The White Tern.
- \**Demigretta sacra sacra* (Gmel.)—The Reef Heron.
- Sula dactylatra bedouti* Math.—The Masked Booby.
- Sula leucogaster plotus* (Forst.)—The Brown Booby.
- Sula sula rubripes* Gould—The Red-footed Booby.
- Fregata ariel* (G. R. Gray) subsp.—The Least Frigate-bird.
- Fregata minor* (Gmel.) subsp.—The Lesser Frigate-bird.
- \**Phaëthon lepturus lepturus* Daud.—The White-tailed Tropic-bird.
- Puffinus* sp.—(An unidentified shearwater).

Specimens of the two frigate-birds and the shearwater have been sent to Dr. R. C. Murphy, of the New York Museum for identification. Unfortunately owing to pressure of other work he has not been able to examine them in time for his conclusions to appear in this paper.

Nests, eggs or young were found in all cases except the first two, the feral Domestic Fowl and the Land-Rail. There can, however, be no doubt that the latter are breeding on the island: both are known to have been liberated there a number of years ago, and they are now present in numbers too large to be strays from the main atoll, fifteen miles away.

The species marked with an asterisk were also breeding on the main atoll in 1941. Originally the majority of the sea birds nested on both islands, but all the edible species have long since been driven from Cocos. Darwin, who never visited North Keeling, found them very plentiful on at least one unnamed island on the main atoll—"overhead, numerous gannets, frigate-birds, and terns, rest on the trees; and the wood, from the many nests and the smell of the atmosphere, might be called a sea-rookery" (Darwin, 1842, p. 542). By the time of Dr. Forbes's visit, at the beginning of 1897, the majority had, as he naively puts it, been driven away by the "constant interruption from the nut-gatherers" (*A Naturalist's Wanderings in the Eastern Archipelago*, 1885, p. 33). Only the

White Tern, *Gygis alba*, the Reef Heron, *Demigretta sacra*, and a Tropic-bird, *Phaëthon lepturus*, had withstood, or been left out of, the general persecution. The latter is described by Forbes as far from uncommon, but he had difficulty in obtaining specimens owing to the height at which it flew. In 1905 Wood-Jones found only the White Tern still breeding on the main atoll, though he was able to add the Redtailed Tropic-bird, *Phaëthon rubricauda*, which does not appear to occur on the northern island (1912, p. 344). He expressly states that the Noddy, *Anous stolidus*, was not resident on Cocos, though it was a frequent visitor to the lagoon (*ibid*, p. 339). As shown above, it had resumed breeding there by 1941, but was doing so in a most unusual site for this species, in the tops of a small area of coconut palms, well out of harm's way. The Cocos-Keeling islanders are undoubtedly much addicted to the flesh of the more edible species. Wood-Jones frankly admits that they were attracted to Christmas Island by the "vast flocks of absolutely unsuspecting birds" (*ibid*, p. 41). The twenty men who accompanied me on my two trips to North Keeling took back something in the neighbourhood of a five hundred *Fregata* and *Sula* carcasses on each occasion.

#### (B)—THE TERRESTRIAL AND SEMI-TERRESTRIAL CRABS

*Gecarcoidea humei natalis* Pocock—Këpiting Kiling.

*Cardiosoma hirtipes* Dana—Këpiting Balong.

*Geograpsus grayi* (M.-Edw.)—Këpiting Siding.

*Ocypoda ceratophthalma* (Pallas)—Këpiting Mata Panjang.

*Birgus latro* (Linn.)—Udang Darat.

*Coenobita rugosus* M.-Edw.—Umpan Merah.

*Coenobita perlatus* M.-Edw.—Umpan Këlabu.

*Coenobita* ? *perlatus* M.-Edw.—Umpan Kiling.

All these species also occur on the main atoll. The trivial names given are the Malay names current on the Cocos-Keeling Islands.

#### (C)—LEPIDOPTERA TAKEN ON NORTH KEELING.

*Hypolimnys bolina bolina* (Linn.)

*Ophiura melicerta* Fabr.

*Utetheisa* ? *lotrix* Cr., ? *pulchelloides* Hmps.

*Zinckenia nigerrimalis* Hamps.

All these species also occur on the main atoll, where the last three are very plentiful.



### Appendix III—Plates & Maps

#### (A)—EXPLANATION OF PLATES.

- Plate 1 (a) View of the south coast of North Keeling in the neighbourhood of the south-east point. Taken about noon, 30:1:41: low tide.  
The birds resting along the top of the shingle bank are Noddies, *Anous stolidus*.
- (b) The west coast of North Keeling, looking south. Taken about 4 p.m., 4:7:41; nearly low tide. The boat lying on the beach is one of the surf-boats used in landing.
- (c) A moderately clear area in the *Cocos-Pisonia* belt. Taken about 1 p.m., 30:1:41. Most of the trees shewn are Ampol, *Pisonia grandis*.

#### Plate II.

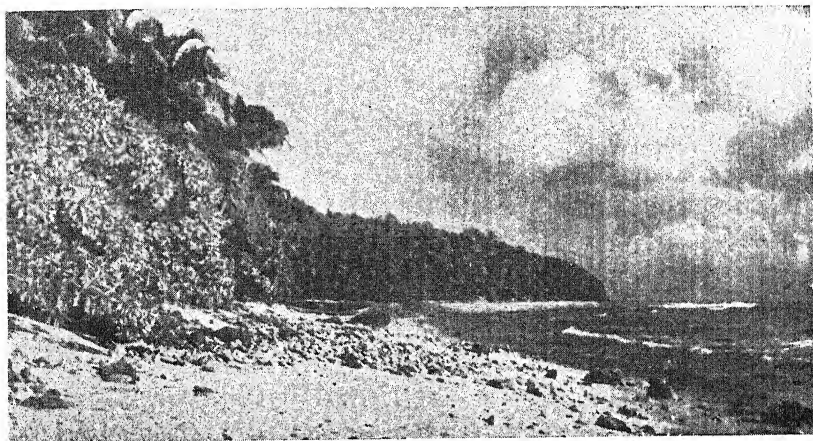
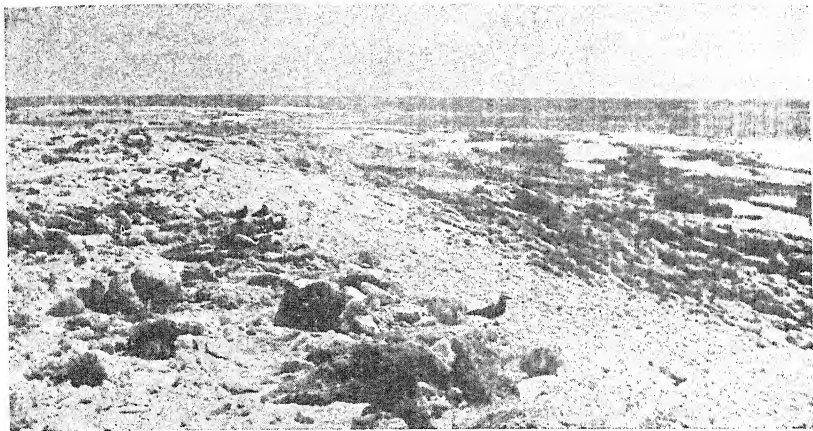
- (a) The lagoon on North Keeling, looking south along the west shore. Taken about 1 p.m., 30:1:41; about high tide.
- (b) The *Pemphis* bank at the north-east corner of the lagoon, looking south towards Pulo Latin. Taken about 5 p.m., 4:7:41, half-tide. The birds are frigate-birds, *Fregata ariel* and *Fregata minor*.
- (c) Frigate-birds, *Fregata ariel* and *Fregata minor*, nesting in the *Pemphis* bushes in the neighbourhood of Kuburan Nek Katek. Taken about 2 p.m., 4:7:41.

#### Plate III

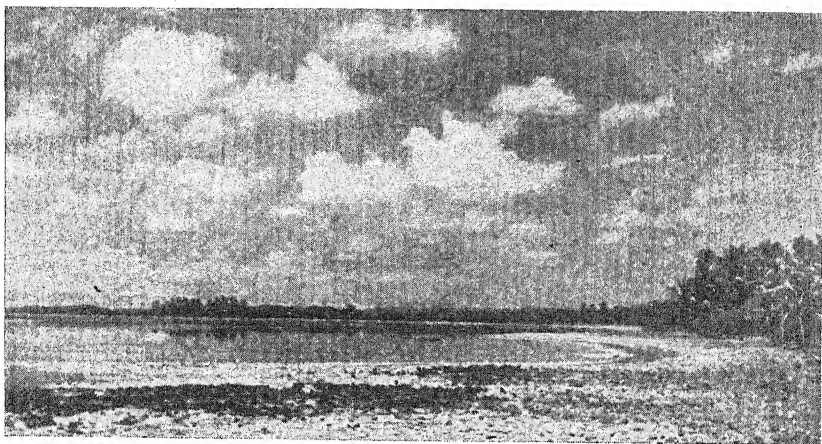
- (a) A White Tern, *Gygis alba*, in flight.
- (b) A Noddy, *Anous stolidus*, alighting at its nest on North Keeling. Taken about noon, on 30:1:41.

#### Plate IV

- (a) A Masked Booby, *Sula dactylatra*, on its nest on North Keeling. Taken early in the afternoon, 4:7:41. The photograph shows a part of the area of cleared ground surrounding the nesting hollow (see text, p. 89).
- (b) A male Least Frigate-bird, *Fregata ariel*, with a young chick. Taken on North Keeling, about 4 p.m., 4:7:41. The young bird, which was about 10 inches long, shows clearly the patch of feathers developing early over the mantle and scapular regions (see text, p. 86).



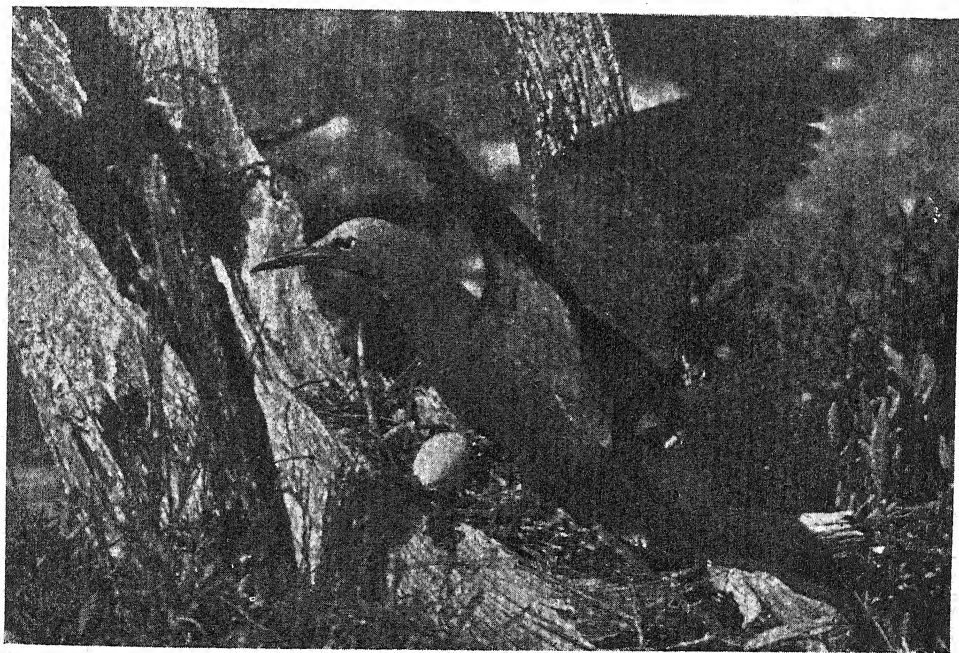
The Island of North Keeling.



The Island of North Keeling.

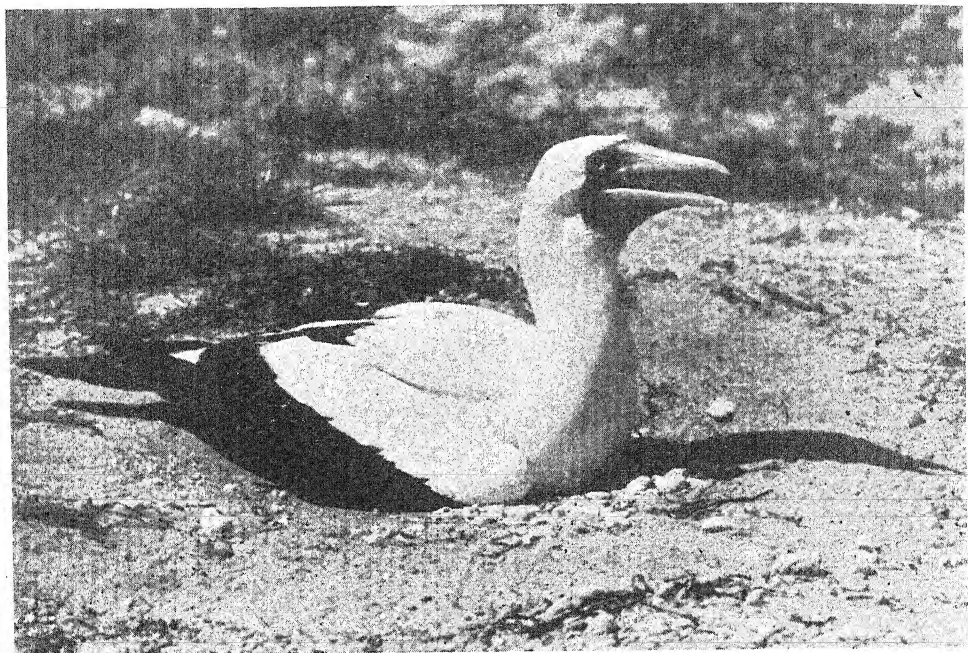


A White Tern in flight.



A Common Noddy alighting at its nest, North Keeling. 30:11:41.





A Masked Booby on its nest, North Keeling, 4:7:'41.



A male Least Frigate-bird with a young chick, North Keeling, 4:7:'41.

The long, lanceolate breeding plumes on the head and back of the adult are being lifted slightly by the wind, which was blowing from behind it. Often, as in the third photograph on Plate II, the birds sit facing the wind, and are then not troubled in this way.

(B)—MAPS IN THE TEXT.

- Map 1, p. 68. The position of Christmas and the Cocos-Keeling Islands in relation to Sumatra and Java.
- Map 2, p. 70. The topography of North Keeling.
- Map 3, p. 74. North Keeling showing the distribution of the principal units of vegetation.
- Map 4, p. 75. North Keeling showing the areas within which the more plentiful species of sea birds were breeding in 1941.

Maps 2-4 inclusive are based on a sketch map drawn in 1941, partly from observations made on the island itself and partly from the current Admiralty chart of the group (No. 2510). The latter was drawn from the running survey made by Captain (later Rear-Admiral) Robert Fitzroy, R.N., of the *Beagle*, in 1836. The outline gives the approximate shape of the island, but it is not claimed that it is accurate in minute details.

## Old Malacca

### Tranqueira & Gajah Bërang

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In No. 12 of the J.S.B.R.A.S., (Dec. 1883, p. 162), there is a translation of a few pages from the old Dutch Records in the Government Office at Malacca, made under the supervision of D.F.A.H. (D.F.A. Hervey), "to which," he tells us, "I have added a few explanatory notes, for some of which I am indebted to Mr. J. E. Westerhout." These pages are an extract from the Diary of Malacca in the year 1756, and were written "in the Fortress of Malacca, Anno 1756, Tuesday, 2nd November."

On that day, in the morning, Captain Stefanus Elias van Steck received from the Governor orders to leave Malacca by the Tranqueira gate, then to follow the road to the Lazarus-house (Leper hospital), that is the actual road to Tanjong Kling, and "to select a suitable place in that neighbourhood for the construction of a *bëntang* to contain a small garrison with some artillery, as an outpost, to put a stop to the marauding parties, which appeared almost daily right opposite Tranqueira gate, continually alarming the inhabitants on that side of the town..."

Here, referring to the Tranqueira gate, Hervey adds this footnote:—"One account says this was so named after a Portuguese man of note: another states that there was a fierce elephant in the neighbourhood at Gajah Bërang, and hence the name, and he would not come nearer because he saw the place was cleared, *Tranquera*. *Tranquera* means an obstacle, probably used to denote one of the outworks beyond the Fortress. The gate is at the end of Heeren Street, known to the natives as Kampong Bëlanda, a quarter of a mile or so from the Stadt-house: *Tranquera* itself extends to a mile or so from the Stadt-house."

This footnote added by Hervey is to us of the greatest interest as, in fact, it alludes to an historical event which happened in Malacca, nearly three and a half centuries ago, an event which Gaspar Correa, the first historian of the Portuguese epopee in the East, has already faithfully recorded in his celebrated *Lendas*.

In this footnote, Hervey has handed down to us the oral tradition about the Tranqueira and the "Gajah Bërang" as it was known to the Malacca people in the eighteen-eighties. So, according to this tradition, coming by word of mouth from their forefathers,



the gate of the suburb of Upeh had been named "Tranqueira" after "a Portuguese man of note, and, at Gajah Běrang, there was a fierce elephant which would not come nearer (to the Gate?) because he saw the place was cleared". All this makes a rather hazy story, and would lead one to believe that, for the Malacca people, the word "Tranqueira" had long lost its Portuguese meaning, and that they had not the least idea of what a "Tranqueira" might have been.

But Hervey is quite correct when he says that "Tranqueira" "means an obstacle" and was "probably used to denote one of the outworks beyond the Fortress."

### Tranquera

A tranqueira was an entrenchment, a palisade made of posts driven into the ground. Sometimes, in front of this wooden fence, deep pits were dug, their bottoms bristling with pointed and poisoned sticks, or caltrops. Till 1620, it seems that the Portuguese had no other fortification in Malacca than the castle built by d'Albuquerque, close to the mouth of the river, on its left bank. We see in Castanheda's *Historia do Descobrimento e Conquista da India* that when Mahmud, then King of Bintang, and his ally the King of Pahang, landed their troops, in 1518, at Malacca on the Upeh side, "our people had already rushed from the Fortress to the native town beyond the bridge, where they occupied the heads of the streets, and hurriedly planted some pieces of artillery which prevented the enemy from reaching the Fortress." (Liv. IV, cap. XLVI). In 1519, Mahmud was still persisting in repeated onsets on the Fortress. By sea, by land, by day and night, his troops exhausted the small garrison so thinned by fever and deaths that, according to Gaspar Correa, there were barely thirty fighting soldiers left to beat back the assailants; they dared not make a sally, or even venture out of the Fortress to dig outworks to hold in check the fury of the enemy. The timely arrival, from Goa, of Antonio Correa, with fresh troops and supplies alone saved the Fortress.

In 1525 (25 Mars) Mahmud tried his hand again on Malacca. Jorge d'Albuquerque, then Captain of the Fortress for the second time, provided for its defence. By his order, four outposts of mercenaries, each with twelve Portuguese soldiers, were established in Upeh (the town), while a garrison of eighty Portuguese soldiers was maintained in the Fortress, ready to rush to the rescue of threatened points wherever need be. Finally, the district where the Kling merchants from Coromandel lived, because of the wooden palisade by which it was protected all round, formed by itself a "kampong" completely distinct from the rest of the town. It was easy to defend against the enemy, and d'Albuquerque, having

no more troops at his disposal, reinforced its population with people from neighbouring districts.

It is in 1525, that the first mention is made by the Portuguese historians of the "Upeh Tranqueira." Tired of the repeated incursions and lootings of Mahmud, the "Quelis" decided to take the defence of their district into their own hands. To this end, they raised round it a strong palisade of thick wooden stakes driven into the ground, a defensive system of fortification very much in use amongst the peoples of the East. It was from this defence work that, in succeeding years, this part of Upeh derived its name of "a Tranqueira". I cannot trace the exact date of its construction, but I think that in proposing 1520 we are not far from the truth, because in this year Mahmud was dislodged from Pago and the mouth of the Muar River, and passed to the Island of Bintang (Rhio) where he established himself as King of "Bintão". My opinion rests on the narratives from Correia, Castanheda and Barros who say that one night the enemies, knowing that the "Tranqueira" was old and that in consequence many of its stakes had rotted, succeeded in throwing to the ground a section of it on a length of some sixty paces, and rushed into the Kampong Kling on the side of "Campochina" (Kampong China) (Castanheda, Liv. VI, Cap. CI). The crash of the palisade was heard as far as the "Famosa". The inhabitants, called to arms by the alarm-bell of the keep, and three Portuguese arquebuseers on duty at the bridge, hurried up to Kampong Kling and beat back the enemy. Early the next morning, Jorge d'Albuquerque had the "Tranqueira" put in good order again.

The episode of the "fiery elephant" (Gajah Běrang) must be located in the following year, 1526. To avoid breaking into the account of the "Tranqueira", I am deferring the discussion of it until the end of this paper, where I will give a translation of the strange story of the "Gajah Běrang", as told by Gaspar Correia, the only contemporary chronicler who thought proper to commit it to writing. It is easy to adopt this course as there is no correlation between the elephant immortalized by Correia and the Tranqueira of Kampong Kling.

From his new retreat in the island of Bintang, Mahmud interfered repeatedly with the Portuguese ships sailing through the Straits of Singapore and Sabang, and the Javanese junks supplying Malacca with food, mainly rice. In 1526 he was driven out by Pero Mascarenhas, Captain of the Fortress, and took refuge at "Ugentana" (Ujong Tanah = Johore), where he died in 1528. His son, 'Ala'u'd-din Riayat Shah, succeeded him on the throne. In 1535 and 1536, D. Estevão da Gama, son of D. Vasco and at that time Captain of Malacca, led two expeditions against Johore. Sultan 'Ala'u'd-din lost so many people that he sued for peace,

and obtained such good terms that he moved to Muar and became ostensibly a great friend of the Portuguese. "For Aceh, a new and formidable foe that drew Johor, Perak and Pahang into friendship with the Portuguese, had appeared" (Sir R. Winstedt: *History of Johor, J.M.B.R.A.S.*, Vol. IX, Pt. III, 1932, p. 18) and its new ruler, 'Ala'u'd-din Riayat Shah al-Kahar, sent against Malacca a fleet carrying 3,000 men with orders to land by night and to storm the Fortress immediately. The expedition reached Malacca on the eve of the feast of "Our Lady of September" (the feast of the Nativity of the Blessed Virgin, that is on the 8th of that month, "ao quarto da modorra") between midnight and dawn, at the time when people are deeply buried in their sleep. They landed so stealthily that no one noticed their coming. They crept into the district of the "Quelys" (Klings) which was enclosed with a wooden palisade, and took the Bastion of the "Bandara" (Bendahara), slaughtering its garrison to the last man. Some of the inhabitants, who had been roused by the turmoil, rushed to the Fortress, crying out that enemies—surely from Johore,—were already in the town. Just at that moment, a troop of the invaders were hurrying to the bridge with the intention of storming the Fortress. The alarm-bell boomed in the still air of the night, and D. Estevão da Gama, took up arms in great haste and rushed out to prevent the assailers from crossing the river. It was then that the Malaccans made out that the enemies were not, as they had believed, people from Ugentana, but men from Aceh. This disturbed D. Estevão considerably, leading him to fear that certain Malacca people, whom he had reasons to distrust, had betrayed the city to the enemy. Leaving the Fortress in the charge of one of his Captains, he made for the bridge with 200 soldiers to resist the invaders. A furious hand-to-hand fight ensued, lasting until dawn, when the Achinese retreated into the Bastion of the Bendahara, from which they riddled the Portuguese with poisoned arrows. On the order of D. Estevão, Tristã de Ataide, one of his Captains, and a hundred men broke open the door of the Bastion and attacked the enemy in the rear. The only chance of escape left to the Achinese was to throw themselves down from the top of the Bastion, and flee to a nearby clump of trees. Here, surrounded by the Portuguese, they resisted stubbornly throughout the day. At nightfall they slipped along the sea-shore to Banda Ilhir and re-embarked, leaving behind them more than 1,500 dead, and many wounded.

This attack by the Achinese had so nearly succeeded that D. Estevão da Gama determined to reinforce the Tranqueira. He therefore, suggested to the merchants of Kampong Kling that, for their own security, they should build a Tranqueira made of taipa, that is that they should build a wall of earth and pebbles strongly beaten together with pestles, instead of restoring the wooden palisades whose stakes must inevitably rot sooner or later. The "Quelys" agreed completely with D. Estevão and immediately set to

work under his supervision. He remained in constant attendance, encouraging the workers and supplying them with food at the expense of the Royal Treasury. Within thirty days—according to Castanheda—the new Tranqueira was completed. Its walls were at least as high as a man, and in some places two and even three times taller.

D. Estevão da Gama's precautions were soon justified. He received news of an Achinese fleet, as strong as the earlier one, making for Malacca. He immediately placed 200 matchlock-men in the Bastion of the Bendahara, which commanded the gate of the Tranqueira; then he posted four platoons, each of about 30 soldiers under the command of a Captain, along the wall of the taipa. The defence of the Fortress he reserved for himself, and a body of a hundred men. This time the Achinese, numbering more than 5,000, landed on the north side of the town and pitched their camp about a quarter of a league from Malacca, at "Tanjacling" (Tanjong Kling). The following night they attacked the Bastion and the Tranqueira. The hot reception which they met with at the hands of the Portuguese, armed with swivel-guns, powder-pots (hand-grenades) and matchlocks, damped their ardour and, when the moon rose, they decided to retreat to their camp. On the following two nights they returned to the attack, and even made several attempts to scale the Fortress.

All these attacks were launched in pitch darkness, before the moon had risen. The Portuguese defence would have been greatly impaired if D. Estevão had not devised a stratagem after the first night. He tied cotton matches coated in tar to iron rods, which he stuck in the ground about a stone's throw from the Tranqueira. As soon as the enemy entered the belt of light, they were seen and fired at. The Portuguese artillery, which had a much greater range than that of the Achinese, proved the decisive factor. They rushed to their ships so hurriedly that they escaped from the hands of Tristão de Ataíde, who attempted to follow them.

When attacked by forces superior in number, the new Tranqueira, though made up of lasting and strong material, was quite inadequate for the security of Kampong Kling, because the Portuguese could not keep a sufficient garrison for the defence of both the Fortress and the Tranqueira. Many captains and soldiers were quartered in the town with the inhabitants, and in case of an alarm were obliged to muster at the Fortress. There was often, therefore, a serious confusion in the execution of the Captain's orders, which more than once jeopardized the fate of the Fortress.

The inconvenience of this state of things was made obvious when the allied fleets of the Queen of Japara, of the Kings of Ugentana, Perak and Marruaz (Bruas) arrived before Malacca,

at nightfall, on June 10, 1551. Kampong Kling was invested by "Sangue de Pate" and his Javanese, and, at dawn, the inhabitants began to crowd into the Fortress. D. Pero da Silva da Gama, Captain of Malacca, sent all the troops at his disposal to drive out the invaders. The Těmenggong and the Bendahara Governor of Kampong Kling, with the help of the Portuguese, made a stout resistance, but as they were inferior in numbers they had to abandon the merchant town, and the goods and foodstuffs in it, to the enemy. This was a serious loss, which put the Fortress in great danger. Not long after, the Johorites took possession of Ilhir (Banda Ilhir), and began to bombard the Fortress (Couto, Dec. VI, Liv. IX, Cap. VI).

It is during the siege of 1551 that we see, for the first time, the people from Upeh,—that is from the diverse quarters of the native town, or northern suburb, crossing the river to take shelter with the Portuguese near the "Famosa". Indeed, since the last Achinese attacks, in 1537, defence-works,—wooden palisades and taipa-walls,—had been erected all round the Fortress and Portuguese settlement. That is the reason why, from this day onwards, at every siege, the native population regularly deserted Ilhir and Upeh, and took up temporary quarters within the Fortress's fortifications.

To return to our subject, the siege by the allies was so protracted that the people of Malacca, being short of provisions, "were reduced to feed on loathsome animals, such as dogs, cats and rats—when they could catch any." D. Pero da Silva da Gama, was considerably worried about the issue of the siege. It was then that an old "unknown soldier" who was living by himself in a small hut near the Fortress, taught him a stratagem which, he assured him, would rid Malacca of her enemies. The Captain fitted out ships, which he loaded with all manner of merchandise; then by his order the rumour was spread abroad that the ships were going to put to fire and sword the kingdoms of Ugentana (Johore), Perak and Marruaz. But, privately, the captains were given instructions to sail to the Straits of Singapore and Sabang and, if they could find there any junks loaded with rice and other food-stuffs, to obtain the latter by barter. As soon as the three kings heard that the Portuguese armada was ready to make havoc of their lands, they rushed to their assistance, and the Javanese were left to conduct the siege alone. On the day following the departure of their allies, a certain Gil Fernandes Carvalho arrived from Kedah. He took charge of some 200 men, Portuguese and natives, and fell upon the Japarites, inflicting a terrible slaughter and thus bringing to an end a siege which had lasted from June to August.

Before 1551, as we have said already, a rough system of fortifications had been started round the Portuguese settlement. The

projected stronghold, or new Fortress, was to include within its walls the Castle built by d'Albuquerque, the Malacca Hill and a small area of level ground between its slopes and the river. As soon as he was appointed Viceroy of India, D. Antonio de Noronha, who was acquainted with the ambitious aims of the Sultans of Johore and Acheh, sent D. Diogo de Menezes as Captain of Malacca (1564), with full instructions for defence-works to be carried out for the safety of the town. At the same time, he gave him a good supply of artillery, with gunners and able craftsmen to carry out the works. This important task D. Diogo did with all dispatch.

As a result, when 'Ala'u'd-din Riayat Shah, the Achinese King, anxious to take revenge for the repulse he had suffered in 1537, entered the roads of Malacca in 1568, at the head of a big fleet carrying 15,000 men and more than 200 cannon of every calibre, he found the Portuguese town shielded partly behind ramparts of stone well mortared, and partly behind walls of taipa and strong palisades, strengthened with stone bastions. In fact, it is in the account of the siege of 1568, by Couto, that mention is made for the first time of the Bastions of Santiago, São Domingos and Madre de Deus. Five gates were giving access in the Fortress, whose circumference measured 1,000 fathoms.

During the series of sieges which Malacca withstood from 1568 to 1582,—four by the Achinese, in 1568, 1573, 1575 and 1582, and one by the Javanese from Japara in 1574,—it was within the precincts of this Fortress that the population of the northern and southern suburbs (Upeh or Tranqueira, and Ilhir), sought protection. In "De Asia", Dec. IX, cap. VIII, we read that, in 1575, some of the people from Upeh stampeded towards the Fortress and fell into the river, when crossing the bridge, and were drowned.

However, when after a preliminary blockade, Raja Ali Jalla 'Abdu'l-Jalil Riayat Shah, arrived from Johore in 1587, to overthrow Malacca, he met with a bloody repulse in front of the Tranqueira. Don Henrique, the native Bendahara of Kampong Kling, had taken upon himself the defence of this part of the town. He allowed the Johorites to land undisturbed while, with his troops, he kept waiting under cover behind the Tranqueira. Then, as soon as the ebbing tide had laid bare the large mud-banks which run all along the shores and forced the boats to keep out at sea, Don Henrique suddenly opened fire with his muskets, and falling upon the enemy, drove them back to the beach. Their commander, "Ginga Raxa" (Singa Raja), and his son were among the earliest casualties. Panic-struck, the Johorites retreated as best as they could towards their ships; but the Malaccans followed after them and inflicted heavy casualties. While Singa Raja was being defeated at the Tranqueira, another enemy party, which was attacking the Franciscan Monastery of "Madre de Deus" on the Bukit China,

was also beaten back. It was an overwhelming defeat. In the same year, a big armada, led by Don Paulo de Lima, came from Goa against Johore. On the 15th August, Kota Batu, the capital, was destroyed, the King put to flight and his fleet burnt.

On May, 1606, when the Dutch fleet entered the Malacca roads, Kampong Kling was emptied of its inhabitants. As usual, all had withdrawn to the Fortress. On the 18th, Matelief landed his troops, numbering 700 men. Four hundred Portuguese and blacks, who were awaiting them on the seashore, gave way and ran to entrench themselves behind the Tranqueira. But as they knew that on the side of Kampong China there were several holes in the taipa wall, which had been mended only with planks, they were afraid of being taken in the rear by the enemy, and they set fire to Upeh and withdrew into the Fortress. Immediately the Dutch took possession of the suburb where they planted cannon to batter the ramparts and bastions of the fort. Matelief had thought that Upeh was protected only by a wooden palisade, and he was greatly surprised to find that it was surrounded by a wall of taipa, "as they build them in Portugal". The coming of a large relief fleet from Goa, under the command of D. Martim Afonso de Castro, the Viceroy, forced Matelief to raise a siege which had lasted four months.

By the way, let us point out that Upeh and its Tranqueira did not bear any part during the last siege by the Achinese, in 1629. The attack against the Fortress was launched from Banda Ilher, that is from the southern suburb, and all the engagements were fought on the left bank of the river, from St. John's Hill (Bukit Pipi) to the Franciscan Monastery on Bukit China.

The Dutch, undaunted by the failure of their first attempt against Malacca, chose their own time, and thirty-four years later besieged the Fortress again. On January 14, 1641, after six months' resistance, it was taken by storm. This time also, as in 1606, the defenders of Upeh were driven out of their trenches, pressed beyond their second line "namely the stone walls of the suburb (Tranqueira) right up to the bulwarks and walls of the city." Then "the Dutch settled in the northern city and started daily bombardment against the Fortress" (Leupe: *The Siege and Capture of Malacca from the Portuguese in 1640-41*, transl. Mac Hacobian; J.M.B.R.A.S., Vol. XIV, 1936, Pt. I, p. 14). The Portuguese returned fire, bringing about the utter destruction of Upeh, or Bandar Malacca. "The suburbs are entirely ruined", wrote J. Schouten in the Report of his visit to Malacca, as Commissary of the General East India Company, "there is hardly a house standing". (Ibid, p. 113). It seems probable that the Tranqueira was completely destroyed. Governor Balthazar Bort, in his Report written in 1678, tells us that in 1677 the Menengkabau Malays of Rembau



and Naning planned an attack on Malacca with 3,770 men: "In consequence of these rumours, which daily increased, we began to make some defences in the northern suburb, *which lay completely open*.... We busied ourselves very zealously with the completion of the works already begun and the addition of others necessary to the protection of the northern suburb. To hasten progress, we pressed into the service all the slaves of the Company's servants and of the inhabitants; so much the more since the dwellers in the said suburb seemed to regard it as already lost and came every day into the fort in flight with their wives, children and property.... We, therefore, had the chief approaches strengthened with all speed by the works before specified (in p. 69), and provided them well with cannon.... To prevent his (the enemy's) breaking in, we closed the principal streets with barricades and planted guns there. Moreover when we saw the enemy approaching at about two musket shots outside the northern suburb, we hastily threw up a breastwork from the seashore up to the garden of the farmer, Roelof Gerritz.... using the fired bricks which lay there ready....". (J.M.B.R.A.S., Vol. V, 1927, Pt. II, 1927, p. 69, 71-72) Surely, if the old Portuguese Tranqueira had been still fit for service after the siege of 1641, Governor Bort would not have found it necessary to raise a new system of defences, and plant cannon in the streets of Upeh, as the Portuguese had had to do in 1518, when there was no fortifications other than the Fortress built by d'Albuquerque.

Therefore, in order to secure the northern suburb, where the richest inhabitants and foreigners were living, Bort suggests that a redoubt be made on the shore and another one halfway between it and a small wooden fort newly built on the river side and named Delft, "also, if between the same, an earthen wall, led from the one to the other, made out of the earth from the moat which must be dug from the sea to the river bank outside the wall." (ibid, p. 25).

The best and most complete description of the northern suburb Upeh (Bandar Malacca) is to be found in the *Declaração de Malacca* (Description of Malacca) by Emmanuel Godinho de Eredia, (1613). The suburb of Upé, he says "obtains its other name of "Tranqueira" from the Rampart: there is a stone bastion constructed on the beach of the seashore, at a point 700 fathoms distant from the mouth of the river in a north-westerly direction: from this point a wall of earth extends in a straight line towards the east for 60 fathoms, past the ordinary service gate of Tranqueira as far as the earth gun-platform; thence, at an obtuse angle, another wall of earth runs in a straight line, in a south-easterly direction, through the marshy and swampy gardens lying inland, as far as the gate of Campon China which abuts on the river. So the suburb of Upé with its country-houses and groves is encircled by a wall which protects it from the attacks of the Saletes (Seagypsies, or Orang laut): nevertheless when war-time organization

prevails, it is entirely depopulated and abandoned, the whole population taking refuge within the walls of the fortress." The suburb of Upeh, or northern suburb, comprised Campon Chelim (Kampong Kling) and Campon China. "All the houses comprised in their area are made of timber: they are roofed with tiles to ensure against risk of fire: the exigencies of war do not permit of stone and mortar buildings here." (Transl. J. V. Mills; J.M.B.R.A.S., Vol. VIII, Pt. I, 1930, p. 19).

All that Schouten says of Upeh is: "the northern suburb was usually called Bandar Malakka, with its well-known street Kampong Kling. It was enclosed by a wall  $2\frac{1}{2}$  fathoms high and fully 1 fathom thick, with a stone gate at the extreme north." (Schouten's Report of his visit to Malacca; J.M.B.R.A.S., Vol. XIV, Pt. I, 1936, p. 88). He does not mention the gate of Kampong China, on the bank of the Malacca River. (Cf. R. Cardon: Map drawn up according to maps and text of *Description of Malacca & Meridional India & Cathay* by E. Godinho de Eredia, 1613: J.M.B.R.A.S., Vol. XII, Pt. II, 1934, facing p. 1.).

That it should be possible, now, to trace any remains of the famous Tranqueira which gave its name to a quarter of Malacca town must very likely be answered in the negative. Yet, according to a friend of mine, Mr. Yeh Hua Fen, a Chinese scholar, who has contributed, in the *Historical Guide of Malacca* (1938), a highly interesting article on *The Chinese of Malacca*, there is in Heeren Street a place still known to the Chinese population as the *Sia Mng Lai* (the interior of the City gate), that is the stone gate at the extreme north alluded to by Schouten in his Report.

So, Hervey was quite accurate when he stated that the Tranqueira denoted probably one of the outworks beyond the Fortress.

### Gajah Běrang

Adjacent to the quarter of Tranqueira is the district of the "fierce elephant", known by its Malay name as "Gajah Běrang". The history of this famous animal had fallen into oblivion among the Malacca people. All that had been retained about it was that "upon a time" a mad elephant had its lair in the wilds of this district, hence, says Hervey, "the name of Gajah Běrang given to it." And, added those of the Malacca gentry who were considered as the most erudite in the folk-lore of the land, those over their seventies, "he would not come nearer, because he saw the place was cleared, "tranqueira", (?). In fact, none of these learned people knew the meaning of this last word: "tranqueira." We must not be shocked at their ignorance. "Christão", or patois spoken by the Malaccans is a debased Portuguese which bears the same relation to real Portuguese that the "pidgin English" of Shanghai, or

“petit nègre” of Saigon do to the English and French languages. Among the Malaccans, many Lusitanian words have become obsolete with the lapse of time: “tranqueira” is one of them. To some, “tranqueira” was a man, like the Piræus, to others “a place that was cleared”. But enough about the word tranqueira. We know its identity. Let us now come to the “mad elephant”, Gajah Bêrang.

In 1525, Pero Mascarenhas had succeeded Jorge d’Albuquerque as Captain of Malacca. In 1526, news came to him of his nomination to the Governorship of Portuguese India. As a result he left Malacca in August and sailed for Pulo Puar, an island in the Malacca Straits, where he intended to wait for the first monsoon which would bring him to Goa about the end of October. When he was anchored at Pulo Puar, a violent tempest assailed his ship, breaking her mast. As a result Mascarenhas had to cancel his voyage and return to Malacca. Because the next monsoon for India would not blow before February, 1527, and he could not bear to remain inactive for six months, he decided to drive Mahmud the ex-king of Malacca from Bintang, where his presence caused grave and continual inconvenience to the Fortress, by interfering with its trade and revictualling. Two expeditions had already been launched by Jorge d’Albuquerque against the island but they had failed. Mascarenhas started immediately to prepare a new attack, and supervised personally the refitting of his ships in the Little Port, at the entrance of the river, near the Fortress. It was then that the episode of the “fierce elephant” took place. Correia tells the story as follows:—

“When he (Mascarenhas) was thus engaged in this work (preparing his expedition) an incident happened which I think good not to pass over in silence. An elephant of the King (Mahmud) had run away from Malacca to the jungle, maddened by the folly of the season (“by the rut”, says Fr. d’Andrada crudely in his Chronicle of the King D. João III), and for years had been roaming in the forest, and now and then he used to come into the town and while the Governor was thus engaged in equipping his armada, this elephant came out from the jungle and entered the town whence the inhabitants scampered away; but he, without doing any harm, went and lay down before the gate of the Fortress (a Famosa), quietly and absolutely motionless. From there they led him to the stable and put him with the other elephants. They tethered him and gave him to eat, and from this time onwards he was never troubled again by this madness. This was cause of considerable wonder because for ten years he had returned to the savage state roaming in the forest, and all the wizards of the land said that this was the foreboding that a great King was to pay obedience to Malacca and that this King could be no other than the King of Malacca who since so many long years was a vagabond in a mountainous country, exiled from Malacca and who, now, had to

submit and to give himself up as a prisoner." (Correia: *Lendas*, T. III, Liv. III, cap V.).

Bintang was taken, "and," Correia goes on to say, "the King, who had retired into the deep of the forests and was dying of hunger, succeeded with the greatest difficulty in breaking through, and finding a track, he got out from the island on the other side and arrived in a land called Hugentana (Ujong Tanah = Johore), from whence he continued to make war until his death." (*ibid.*)

The first time I came upon this passage of the *Lendas*, I thought immediately of the district named Gaja Běrang as the probable site of the forest where some 400 years ago the hero of Correia's history—"en mal d'amour"—took up its abode. But I had nothing to corroborate this opinion, no text, no map upon which to rest my conjectures. The footnote by Hervey would seem to prove beyond doubt that I was correct. In the 16th cent. there were no ricefields in that district. All the surroundings of Malacca on land, were then an immense wilderness. Even, in 1678, Gajah Běrang had remained untilled and uncultivated, but for a fruit-tree garden," the garden of *Gajah Beram* on the N. W. bank of the river, with Domingos Correa as its owner." (Bort's Report: trans. M. J. Bremmer, J.M.B.R.A.S., Vol. V, (1927), Pt. I, p. 50.)

Later on the history of the mad elephant was borrowed from Correia by Francisco d'Andrada (1540?-1614) who reproduced it almost word for word in his "chronica do muy alto e muyto poderoso Rey destes Reynos de Portugal Don João o III", Pte. II, Cap. V.—Edic. 1796. D'Anrrada indeed made ample use of Correia's manuscript for the redaction of his Chronicle. In the Dedication to King Philippe III of Portugal (IV of Spain), he says:—"As for the affairs of India I availed myself of informations which fell into my hands. . . and which seemed to me of much more credibility than any others which may exist, because they were written by a respectable man who says that he arrived in India a few years since its discovery and engaged in writing the things which happened in it during the whole course of his life which has been a long one, and the things he could not see with his own eyes because he was not present, or others he did not see, he got about them information so worthy of trust that he has made mention of them as being as true as if he had witnessed them himself." (*Chronica* etc., p. viii).

The *Lendas dos Feytos da India* were not printed and edited until between 1858 and 1864, 300 years after the death of the author. Correia arrived in India on the 20th August 1512 and performed the office of secretary to Affonso d'Albuquerque. He never returned to Portugal but spent his whole life living by turn, now in Goa, now in Malacca. Correia was murdered in Malacca

with the connivence, if not by the order, of the Captain of the Fortress, D. João da Gama, a descendant of Don Vasco, Grand Admiral of Portuguese India, between 1579 and 1582. He was survived by his wife Anna Vas, a liberated slave, and a son Antonio.

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### A Note on Captain Light

By C. E. WURTZBURG

(Received, October, 1947)

Dipping recently into the Memoirs of William Hickey, I came across, for the year 1782, a reference to Captain Light which I do not remember seeing in any biography.

Hickey and his wife came out to India that autumn in a Portuguese vessel from Lisbon, the *Rayna de Portugal*. The vessel was intercepted by the French and taken to "Trincomalay" to await the decision of Suffren.

On 20th January 1783 the French Admiral and his fleet arrived. Two days earlier "arrived a large grab called *Blake*, commanded by Captain Light, who afterwards became Governor of Prince of Wales's Island or Pulo Penang. The *Blake* had been taken by an enemy cruizer off the Coast of Coromandel." (Vol. III, p. 50.).

Presumably Light was soon after released, or exchanged, as his efforts to get the Governor General to take an interest in Penang continued without any apparent interruption.

## The Penang Cannon, Si Rambai

By DATO F. W. DOUGLAS

(Received, November, 1947).

In the J.M.B.R.A.S. Vol. 20, pt. 1, there is a paper by Mr. A. E. Coope, M.C.S., on the Floating Cannon of Butterworth. (1947, pp. 126-128). In it he mentions the bronze cannon which adorned the esplanade in Penang before the war, saying that its history is lost.<sup>1</sup> Certainly the Municipal Commissioners who had charge of the cannon knew nothing about it, but its history in Selangor was known to the late Sultan Suleimanshah, and its earlier history is engraved on a silver plate let into it. In 1936 the Secretary kindly obtained a rubbing of the inscription for me. The text was in Jawi, and read as follows,

*Tawan Sultan*

*Tawanan kita Sri Perkasa Alam Johan Berdaulat tetkala menitahkan Orang Kaya Sri Maharaja akan Penglima dan Orang Kaya Laksamana dan Orang Kaya Raja Lela Wangsa akan mengamok ka Johor senna 1023.*

Captive of the Sultan.

Taken by us, Sri Perkasa Alam Johan Berdaulat, at the time when we ordered O.K. Sri Maharaja with his Captains and O.K. Laksamana and O.K. Raja Lela Wangsa to attack Johor, in the year 1023 A.H. (1613 A.D.).

The name of the maker had also been cast on the barrel by the Dutch.—*Ian Bergerus me fecit 1603.*

According to Winstedt's *History of Malaya*, the Dutch Admiral Verhoef went to Johor in 1606, to try to obtain permission to build a fort there to serve as a base for an attack on the Portuguese at Malacca. It is probable that the gun was given as a present to the Sultan of Johor at this time, who insisted, however, that the Dutch must conquer Patani before they could be allowed to build a fort in Johor. As they had a factory at Patani it is unlikely that they would wish to make it subject to Johor. Then in 1608 Johor made a treaty of amity with the Portuguese. Both sides, therefore, failed to get what they wanted, and the gift did not achieve its object.

The silver plate was let in by Mahkota Alam, the famous ruler of Achin, who wrote a letter, the original of which is in the

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<sup>1</sup> The Japanese erected some buildings on the esplanade at Penang during their occupation of Malaya, and while doing so removed the cannon. Since writing this Note I have received the news that the gun has been found, and is once again back on the Penang padang.

Bodleian Library at Oxford, proposing to King James 1st an alliance with England. *Inter alia* he asked for two English women as his wives. Neither the alliance nor the wives materialised.

Mahkota Alam had made several unsuccessful attacks on the Portuguese at Malacca. He now turned on Johor, and on May 7th, 1613, he completely destroyed Batu Sawar, the capital, and took the Sultan, his family and thousands of its inhabitants captive to Achin. Among the prisoners was Sri Lanang, the Bendahara who edited the Malay Annals in 1611/12, and who was still alive there in 1638.

The gun remained in Achin until 1795, when the Achinese sent it to Selangor in order to obtain the services of Raja Nala, the younger brother of Sultan Ibrahim, in their war against their enemies the Dusun. He died during the campaign. The gun adorned the fort at Kuala Selangor, where a white snake is said to have made its home in it, as mentioned by Anderson in his *Considerations* (1821). In 1871 the Colony sent a force ostensibly to smoke out a pirate's den, but, as Winstedt says, H.M.S. *Rinaldo* shelled the enemies of the then Viceroy out of Kuala Selangor. The late Sultan Suleimanshah was present as a small boy of six. The fort was dismantled, and twenty-nine guns of various calibres, including "one brass gun", removed by the Colony's steamer *Pluto* to Penang.

Here we must follow the Selangor tale. The gun was thrown overboard opposite the esplanade, and lay in the water until about 1880, when it was hauled up and mounted on a carriage. The account is embroidered by a report that it refused to come out of the water until Tunku Kudin, who had retired from his appointment as Viceroy of Selangor, came to their assistance. He tied a piece of thread to the cannon, which at once floated in obedience to the orders of a Selangor chief.

In Penang it became an object of reverence. Ladies desiring a child would go there and do *pujah*, laying flowers on the barrel. It was known by the name of Si Rambai.

It will be noticed that this cannon apparently had the same capacity of floating as the one in Butterworth, and it seems more than possible that the latter also formed part of the loot taken from Kuala Selangor in 1871.

There is a Selangor prophecy that only when this gun returns to Selangor will the State recover its former greatness. If this were to happen now it would coincide with the establishing of the capital of the Malay Federation there, but its past history does not indicate that it has brought much luck to its owners.



## Langkasuka The Island of Asoka

By W. LINEHAN

(Received, January, 1948).

Langkasuka, according to the Kedah Annals (*Hikayat Marong Mahawangsa*), was the name by which the ancient settlement at the base of Kedah Peak in Kedah was known.

In the early centuries of the Christian era, or perhaps even earlier, Indian traders resorted to the Malay Peninsula. Eventually they made settlements in Kedah among other places. The Kedah settlement was founded, at the latest, between the first and third centuries A.D.<sup>1</sup> Strengthened by succeeding waves of Indian colonists it developed into an important kingdom, with ramifications which reached far beyond the borders of the territory comprised in the modern State of Kedah. This kingdom was well known, not alone to Indian, but to Chinese and Arab voyagers. The names by which their chronicles describe this kingdom are mentioned below. The view here presented is that the original name of this settlement, and of the kingdom which grew out of it, was *Lanka Asoka*, "The Island of Asoka", that, in the course of centuries, the origin of the name was lost so completely that the Malay records, when they came to be written, evolved the etymological fiction regarding the name *Lanka Asoka* which is here discussed.

A romanised text of the Kedah Annals, edited by Mr. A. J. Sturrock, M.C.S. (retd.), was published in the J.R.A.S. (Straits Branch) No. 72, 1916. Long before that date, however, Colonel James Low had published his translation of the Annals in the Journal of the Indian Archipelago and Eastern Asia (Vol. III, No. 1, 1849). The translation was reprinted, at the instance of Prince Damrong of Siam, under the auspices of the Vajiranana National Library (Bangkok, American Presbyterian Mission Press, 1908). In the introduction to his translation, Low says that the MS. which he used had been given him by Sultan Ahmad Tajud-din Halim Shah who had taken refuge in Penang during the Siamese invasion of Kedah in 1821. As to the text of the Annals he remarks (p. 91).

".....The Marong Mahawangsa was not known to the Siamese, being in the Malayan language and preserved in the private repositories of the Rajas of Kedda. It was discovered by the Raja of Ligor when he last took that province into his

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<sup>1</sup> See Dr. Quaritch Wales, "Archaeological Researches on Ancient Indian Colonization in Malaya", J.R.A.S.M.B. Vol. XVIII, Part I, 1940.

own hands, and it is said that he destroyed it when told that a king of Siam had his origin there".

"To this, the editor of the Bangkok edition has a foot-note: "Other copies must exist. We have one."

The Annals relate that Raja Marong Mahawangsa (the legendary founder of the settlement), after landing from his ship in the locality of the Sungei Bujang<sup>1</sup>, proceeded to look for a favourable site for his settlement. The Annals go on to describe the event (my translation is based on the Sturrock text, pp. 45-6) :

"Now Raja Marong Mahawangsa sailed in an easterly direction in his vessel and skirted the mainland. And so he arrived at a bay with a headland. And Raja Marong Mahawangsa made enquiries of the senior pilot in his vessel, who replied 'Your Highness, that large island that is just in the process of being united with the mainland is called *Pulau Sri*, and that small island is called *Pulau Jambul*, and the small island a little more inshore is called *Pulau Lada*.' Raja Mahawangsa said 'Let us then put in and anchor at the headland of the island.' And the craft sailed to the place designated by Raja Marong Mahawangsa. And the craft arrived and anchored there. Raja Marong Mahawangsa with all his officers and warriors went ashore. And then there came in great numbers the *Gergasi* tribes (*Kaum gergasi*, "the ogres", the aborigines of the country according to Kedah tradition), rather large in physique, into the presence of Raja Marong Mahawangsa. Raja Marong Mahawangsa knew that they were of the race of *gergasi*, and greeted them in a pleasant voice, and gained their goodwill. And all the race of *gergasi* stood in awe of Raja Marong Mahawangsa, and were amazed at his bearing which was incomparable at that time, and those who gazed on him stood in fear and trembling. And he said to the *gergasi* who had come 'we shall stop here, if it is thought well. . . . .'. And all the tribes of the *gergasi* respectfully replied, 'It will be even a greater pleasure (*ka-sukaan*) to us, your humble servants, for we have no king here; and so it is better that Your Highness should be pleased to proceed to view the land which should be occupied.' Raja Marong Mahawangsa then proceeded to view the clearing on which the fort, fosse, audience hall and palace were to be built. In his train were the aboriginal tribes and all his officers of State. He came upon a site magnificent in its location and in the lay of the land, wherefore he did not go (back) to his ship, so enthusiastically did he engage in the construction of the fort and the palace with its audience hall: and very large and won-

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<sup>1</sup> *Bujang* is conjectured by Dr. Quaritch Wales to be a rendering of the Sanskrit *Bhujanga*, meaning a serpent.

derful these were. When the audience hall was completed it was named *Langkasuka* because its construction was carried out with eating and drinking and rejoicings (*ber-suka-sukaan*) and with various animals such as the sambhur, the barking-deer, the larger dwarf deer, the wild ox, and indeed all animals of the chase providing food for everyone. And great was the gladness (*ka-sukaan*) of the whole tribe, with beatings (of drums, or hands) and dancing, for they had had no king but only a head-man, and furthermore because of the affability of of Raja Marong Mahawangsa. When the fort and palace were completed all the officers of State and the warriors had houses and a village, duly planned, made for themselves around the fort of their king."

The author of the Kedah Annals would thus derive the name Langkasuka from *Lanka-suka*, "The Island of Gladness". It is most improbable that this derivation is correct. That it seemed incongruous to the auditor himself is shown by the pains which he took to explain it.

The Kedah Annals make two other references to Langkasuka by that name, (1) again in the time of its legendary founder where there is mention of the "audience hall at Langkasuka", (2) during the reign of a later ruler, Raja Sri Mahawangsa, where that king "became tired of living at the fort of Langkasuka" and moved to Serokam.

Other records describe the country whose capital was situated at the base of Kedah Peak by names which are generally accepted as being renderings of *Langkasuka*. The "History of the Liang Dynasty" (502—556 A.D.)<sup>1</sup> mentions a country called *Langgasu* or *Langga* whose people, ardent Buddhists, said that the country had been established four hundred years earlier; one of the princes of the country had lived in India as an exile and had married the daughter of an Indian king; the exiled prince on his return became king of Langga; he died twenty years afterwards and was succeeded by his son *Pa-ka-da-to* who sent an envoy to China in 1515 A.D. with a letter extolling Buddhism. About 692 A.D., I-tsing mentions a country called *Langkasu*. The Tanjong Inscription of 1030 A.D. refers both to *Ilngasogam* and to *Kadrum* (Kedah). Chau-Ju-kua, writing about 1225 A.D. mentions *Lang-ya-si* or *Ling-ya-sseu-kia*. The Javanese poem, *Nagarakrtagama*, composed in 1365 A.D. mentions both *Langkasuka* and *Kedah*. The Pasai Annals mention *Langkasuka* as having been destroyed about 1370 A.D.<sup>2</sup>

<sup>1</sup> W. P. Groenveltdt's "Notes on the Malay Archipelago and Malacca" reprinted in "Miscellaneous Papers relating to Indo-China and the Indian Archipelago", Second Series, Vol. I, Trubner & Co., London, 1887 (pp. 135—8).

<sup>2</sup> R. J. Wilkinson, "Early Indian Influences in Malaysia", J.R.A.S.M.B., Vol. XIII, Pt. II, 1935, pp. 4-5.

It is significant that not one of the Arab writers—Ibn Khor-dadbeh (846 A.D.), Sulaiman (edited by Abu Zaid c. 920 A.D.), Ibn Muhalhal (c. 941 A.D.) or Idrisi (1154 A.D.)—describes Kedah (or its capital) as *Langkasuka* (or by a variant of that name); they all use variations of the word *Kedah*. The absence of mention of *Langkasuka* by Arab writers, whose fellow-countrymen officially converted Kedah to Islam about 1474 A.D., would argue their ignorance of the name, and would go some way to explain why the author of the early part of the Annals (in which *Langkasuka* is mentioned)—Annals which were largely influenced by Arab missionaries—found such a difficulty in tracing the origin of the name *Lanka Asoka*.

Asoka (reigned c. 264—228 B.C.) was the grand-son of Chandragupta, founder of the Maurya (Peacock) dynasty, who had wrested the Indian provinces of Alexander the Great from the Seleucus. His mother was a lady from Champa. In the ninth year of his reign he invaded Kalinga and was so impressed by the horrors of warfare that he gave up the desire for conquest and devoted himself to the propagation of the Buddhist faith. During his reign Buddhism was introduced into Ceylon by his son Mahinda. Asoka's dominions included all India. He was the most powerful sovereign of his time and the most remarkable and imposing of the indigenous rulers of India. "If a man's fame", says Köpen "can be measured by the number of hearts who revere his memory, by the number of lips who have mentioned and still mention him with honour, Asoka is more famous than Charlemagne or Caesar".

Was it any wonder that these early Indian colonizers of Malaya, fervent Buddhists, should have called their first settlement, situated at the foot of Kedah Peak, by the name of the great Buddhist Emperor, Asoka, whose Wheel is symbolised to-day in the flag of free India?

The origin of the name *Lanka Asoka* was lost in the mists of time. In its Malay form *Langkasuka* the name still persists as the designation of a tributary to the Perak (Wilkinson, *loc. cit.*, says the Patani) river in its upper reaches. In the folk-lore of north Malaya is recorded a story of a fairy-land, *Negeri alang-kah suka*, "Land of all one's wishes", (Wilkinson, *loc. cit.*), a distant echo of *Lanka Asoka*.

Professor K. A. Nilakanta Sastri, who has been good enough to peruse the above note, writes:

"I have read the paper carefully and see no objection to it. But I know of no evidence, literary or epigraphical, connecting Asoka with Malaya.

Lanka means 'island' in some Indian languages, and Lanka Asoka would mean 'Island Asoka', or even 'Island of Asoka'.

The Tamil form Ilangasokam, with long *ā* in Rajendra's inscription may be taken to support your surmise—Ilanga (Lanka) plus Asoka. The initial *i*, and *ga* (written *ka* but pronounced *ga*) are typical features in Tamil transliteration and need cause no difficulty."

While there is no direct evidence connecting Asoka with Malaya, apart from the etymological significance of the name *Langkasuka*, as here presented, there is some evidence relating that emperor to the near territory of Burma. Coedès ("Histoire Ancienne des Etats Hindouises d'Extreme Orient", Hanoi, Imprimerie d'Extreme Orient, 1944, p. 20) makes mention of "the religious mission of the Buddhist monks Sona and Uttara whom the emperor Asoka appears to have sent in the third century B.C. to Suvannabhumi, the 'country of gold', generally identified, rightly or wrongly, with the ancient Mon country and more especially with Suvannabhumi, the 'country of gold', generally identified, rightly or wrongly, with the ancient Mon country and more especially with the town of Thatön". The 'country of gold' may very well have included Malaya especially the port of Langkasuka which must have been one of the ancient harbours from which gold from the Malay Peninsula was exported. We also know that Asoka's son, Mahinda, visited Ceylon. Kedah, in the region of the Kedah Peak, was an almost inevitable landing place for the Indian Buddhist missionaries and traders of that religion and the adventurous younger sons or other near relatives of Buddhist Indian kings who followed their traders and missionaries.

That there was no incongruity in describing the earliest Indian settlement in Kedah as *Lanka* 'Island' is shown by the extract from the Kedah Annals above given and by the following quotation from Dr. Quaritch Wales (*loc. cit.*, p. 2) who relies upon Low's translation:

"The probability is that Kedah Peak was a peninsula when the Indian colonists arrived. Though the swamps bordering the Merbok had not yet formed, and much of the low lying land north and south of the Peak was still under the sea, it is difficult to believe that the comparatively high neck of land between Bedong and Gurun was beneath the sea in historical times. In the *Kedah Annals* the captain of the ship on which the legendary founder of Langkasuka, Marong Mahawangsa, arrives, is represented as saying to the adventurer 'The large island we have reached (Kedah Peak) is now *becoming* attached to the main land'. Legend referring to the earliest time of which the Kedah people claim to have memory therefore refers to the process as already begun. Moreover it is well known that many ancient geographers did not distinguish between peninsulas and islands. We may therefore suppose that, at the period to which the *Kedah Annals* refer, Kedah Peak was not an island but *almost an island*."

## **Notes on the Kampong, Compounds, and Houses of the Patani Malay Village of Banggul Ara, in the Mukim of Batu Kurau, Northern Perak**

*By* R. O. NOONE, B.A., F.R.A.I.

*(Received, September, 1947)*

During 1940 the Government of the Federated Malay States undertook an Economic and Nutritional Survey of an inland Malay village in northern Malaya. The village selected for this work was Kampong Banggul Ara not far from Batu Kurau in Perak. Whilst engaged on this survey on behalf of the Government, and during several months before it had started, I collected the material for this paper. In order to carry out a detailed survey of a fair proportion of the houses (of which there were about sixty in the village), twenty-five were chosen at random, and from these the information contained in the appendices was obtained.

### **THE VILLAGE AND COMPOUNDS.**

Malay villages or 'Kampongs' are to be found scattered about the country in much the same way as are our villages in England. Comparatively recently, towns, or what are termed such by the local Malays, have sprung up at intervals along most of the main roads, and here the inevitable Chinese has opened shops, billiard-rooms and coffee houses, in which he does his best to extract money from the villagers. From here also, bus services are run into the larger towns; there is probably a Police Station, and the town as a whole acts as a sort of central depot for the dissemination of the elements of culture contact to the surrounding villages. Many of the inhabitants of the Kampongs live in a hazy world of their own which goes no further than the town on the main road. Occasionally, however, they visit the larger towns, either of necessity or for pleasure.

Batu Kurau is one of these small towns. Its satellite Kampongs are many, stretching in all directions; but the direction with which we are concerned is due south up the valley of the Sungai Kurau. In this valley, which probably covers an area of about twenty square miles, the Malays recognise at least fifteen different Kampongs. A six-foot wide bicycle track forms the main means of access to the villages, which are themselves a network of minor paths linking up the various houses and the larger track. Towards the end of the Kurau valley lies Kampong Banggul Ara; one of the larger villages on the river, with several minor ones dotted about close to it in the surrounding flat area. Its exact boundary

is uncertain to the inhabitants, but the Government Survey and Boundary stones, together with the Sungei Kurau are used to define its limits. In the village two of the main bicycle tracks meet, and at the junction are six Chinese shops and the Government Boys' School. Sprawled around to the south and west of this are the houses of the villagers, hidden among rubber and fruit trees. Still further south lie the open padi fields, bordered on their western side by orchards, and on the south by more rubber up against a wall of jungle. Rising loftily out of the low-lying padi fields are the precipitous sides of Gunung Kurau, a limestone hill whose flanks have recently been overgrown with jungle, and whose summit is crowned with a mango tree of unknown origin. A short distance down the path leading to this cliff is the Government Girls' School and the house of the Kētua, the village headman who is responsible to the Penghulu of the Mukim at Batu Kurau.

As far as can be ascertained, both from information gathered from the people, and from the few books dealing with the history of this part of the country, the predecessors of the present inhabitants originally lived in the old state of Patani in southern Siam where they were ruled by one of their own people. They became involved in a war with the Siamese and were defeated. Many of them then fled south and some came to settle in the valley of the Kurau river, a region which had hitherto been uninhabited by Malays because of a particularly stubborn *To-Kēramat* who haunted the cave of Gua Rimau in the limestone hill nearby. The date of their flight from Patani is uncertain, but it seems to have taken place about a hundred and twenty years ago.

Their main route southwards was via Baling in Kedah and Selama on the Perak-Kedah border. Another route taken was through Grik and thence over the hills south-westwards (perhaps even through Lenggong). Many of the inhabitants of the Kampong still have relations at various points along these two routes, and some are actually still resident north of the present Malayo-Siamese frontier. It is interesting to note that a certain type of knife known as the *Parang Chandong* which is believed to be of Siamese origin, is found along these evacuation routes, and I have seen it in use in Kampong Banggul Ara.

The present-day village, the lay-out of which is no different from that of any others in this part of the State, is entirely open and is in no way a fenced territorial unit, as some of the Patani villages may have been in earlier times. Up to about forty years ago there was another village named Kampong Sungei Bubu, which lay three miles to the south-west on a spur above the stream of that name. At that time the people of this village evacuated it and moved into Banggul Ara, where they bought land. The reason given for this evacuation was that they could not get rice to grow



properly in the valley beneath them, so they sold their herds of buffalo and cattle and settled in the more fertile valley of the Kurau river. The remains of some of the houses of the old village can still be seen today, though bēlukar has spread over and covered most of the site. The pillars of the houses, which seem to have outlasted everything else, were very massive and much larger than any used today. They are said to have been dragged from the jungle by elephants which were kept by the people, and evidence of which I found in the form of links from an elephant chain in a trail trench put down through the kitchen site of the head-man's house.

The arrangement of the houses in Kampong Banggul Ara appears to follow no special plan, the majority being built not near the track but a short distance back. Each house is in a sort of clearing in the rubber, on a plot of land or compound (*Kawasan*) in which fruit trees, pinang trees, etc., may be planted. Sometimes the compound is hedged in by a line of areca-nut palms (*Pinang*), which may have a single wire strand nailed round to form a fence; but by far the majority have no form of division at all. When the buffalo and cattle are allowed to wander in herds rough fences of bamboo are often erected to keep the animals out of the compound. A very few houses have good barbed-wire or wooden fences around them, and a gate which can be closed at night.

The most conspicuous and numerous of the fruit trees in the compounds are the clumps of bananas which are invariably present. Their long broad leaves help to keep off the heat of the mid-day sun, while the sale of their fruit brings in a small but welcome sum to the house owner. Some compounds have a small fenced-off vegetable bed in which a few pumpkins, etc., are planted. The fauna of the compound is made up of a collection of goats, chickens, ducks and cats. At night the goats are kept in special houses (*Kandang*) built on the ground of slats of wood or bamboo placed a few inches apart for ventilation and roofed with atap. As the sun goes down, fires of coconut-husks, leaves, wood or any other available fuel are lit near these shelters to keep away mosquitoes and sandflies. The chickens also have their own sheds (*Rēban Ayam*) constructed in much the same way, but generally above ground level which keeps them safe from chicken thieves and prowling animals.

Under or near the house there will be a foot pounder (*Lēsōng Kaki*) with which the women husk rice or pound it into flour. It consists of a more or less horizontal beam about eight feet long, pivotted three feet from one end by means of a wooden rod passing through two uprights. The height of this fulcrum above the ground is between six inches and one foot. At the end of the longer portion of the beam is embedded a vertical pestle of wood (one and a half to two feet long) which engages in a fixed mortar

immediately beneath it. This is made of a block of wood with a hollow about nine inches deep and ten inches wide at the top, tapering towards the bottom. The women work the pounder by placing one foot on the shorter end of the beam and pressing down, whereupon the pestle at the other end rises in the air; then the weight is suddenly taken off the foot so that the pounder falls into the mortar containing the padi. The earth is sometimes scooped away from under the shorter end of the beam to allow for the see-saw motion. The other type of pounder, which can replace the above, is the hand pestle and mortar (*Lěsong Tangan*), which is a wooden mortar similar to the one described above (the mortar of the foot pounder may even be used), and a pestle of hard wood about four feet six inches long. With two or three pestles several women may pound in the same mortar.

Winding their way through the Kampong are several buffalo tracks, paths used only by these animals and cattle, leading from one grazing ground to the next (i.e. from one area of *běndang* to another), or down to the river. After the padi harvest, when the buffalos are let loose, they form herds and wander about at leisure with their young. In this Kampong alone there are three herds during this period. At night they are left to their own devices, but a few of the more careful owners catch their buffalos and tether them until dawn. This is no easy task and I know of one unfortunate man who spent a week trying to catch his buffalo from a herd, and then gave up when he had no success.

The padi fields of the village are dotted about in various areas, the nearest being immediately south of the village. Every year, just before the fields are cleared, the villagers collect together to dam up the streams and repair the banks so that they can get the maximum amount of water for their rice. This is the first instance of co-operative effort, which is evident throughout padi planting. Later, groups of men band together to work at the clearing of the fields. From early morning till mid-day they work in co-operation, first clearing one field, then the next. At noon they eat in the *běndang*, after which they stop for the day and each individual has an opportunity of doing his own work until evening. Finally, at the appropriate time, the women co-operate to plant the seedlings, working in the same way as did the men. The rice, when harvested, may be stored in special houses built in the compound in much the same way as the main body of the living houses, but smaller and usually more solidly built. Some of the poorer householders keep their padi in tubs of stout bark or wood. Each household uses the rice from its store until such time as the danger level is reached. This danger level varies according to the total amount of padi stored and the size of the family consuming the rice; there may be anything from thirty or forty *gantangs* (or less) up to about one hundred *gantangs* kept in reserve. When this danger level is reach-

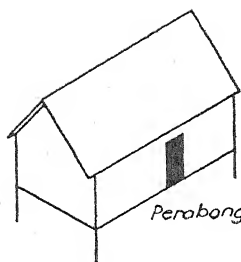
ed the family starts buying shop rice, and the reserve is kept in stock in case of an emergency (i.e. sickness or a sudden rise in the price of rice). Not until after the next rice harvest is it consumed, unless such an emergency has arisen in the meantime.

### THE HOUSE AND ITS CONSTRUCTION<sup>1</sup>

All Malay houses are of the same basic type though they may differ in their construction and in the materials of which they are built. Their most noticeable feature is the fact that they are all raised from the ground on pillars of wood, or in the case of the more modern ones, on columns of cement and brick. The origin of this custom of raising the houses from the ground has been much discussed by various authors. The practice is found to obtain from the southern borders of Tibet to the South Seas, although it is by no means the invariable rule within this area. The jungle peoples of the interior of the Malay Peninsula, except the Semang and some others, build long-houses of bamboo raised as much as six feet or more above the ground. Their reason for doing this is because such houses offer them protection from wild animals, and in early times from their enemies. It seems very probable that this may have been one of the reasons for the Malay building above the ground, apart from the fact that it offers a much cleaner way of living. Another suggestion is that the maritime Malays living in swampy areas along the coast, if not actually on the water's edge, evolved the use of piles in much the same way as the old lake dwellers of central southern Europe.

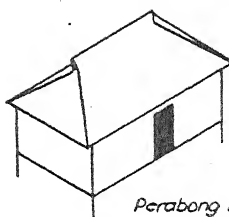
Some of the more modern habitations in the village tend to copy European houses in their construction and materials and retain little of the traditional shape and plan; those who can afford it using cement and bricks, planks and corrugated iron, instead of the produce which the jungle offers them. The owner of a poor type of house will often refer to it as *Dangar* (the same as the Perak Malay, *Pondok*) or 'Hut', but this is only to humble himself in the eyes of the person to whom he is talking. Whether they are referred to as huts or houses, they are all divided into one or other of two major classes, firstly *Rumah Pěrabong Lima*, and secondly *Rumah Pěrabong Panjang*, (Figures 1 and 2). This classification is after the shape and construction of the roof, *Pěrabong* being the ridge covering of a roof. The roof of the *Pěrabong Lima* (76% of the houses were of this type) consists of two pents meeting centrally above, the upper horizontal edge of each pent being considerably shorter than the lower edge. In effect, therefore, each pent is rhomboid in shape, and the gables are not vertical but slope inwards and upwards from the top of the wall. The covering for these gables is also rhomboid in shape, and is not triangular as would be expected, because there is always a triangular

<sup>1</sup> Figures 1-8, page 129. Figures 9, page 135. Figures 10 opposite page 138.

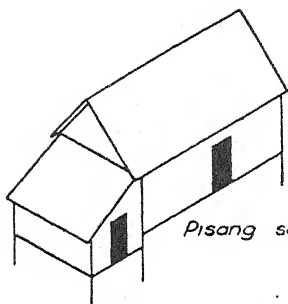


*Perabong Panjang 1*

MAIN BODY

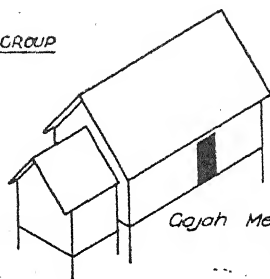


*Perabong Lima 2*

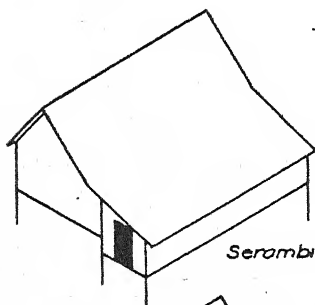


*Pisang sa-sikat 3*

KITCHEN GROUP



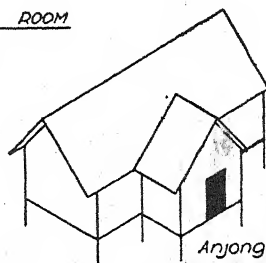
*Gajah Menyusu 4*



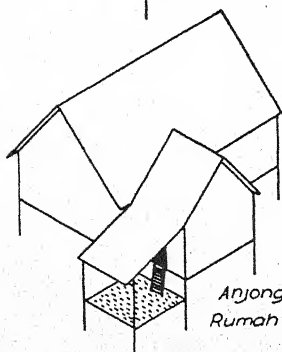
*Serambi 5*

RECEPTION ROOM

GROUP

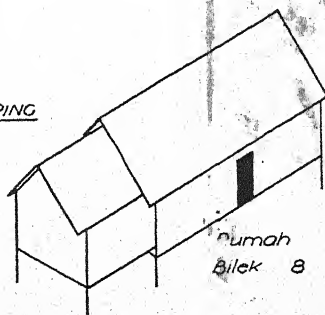


*Anjong 6*



*Anjong &  
Rumah Tangga 7*

SLEEPING



*Rumah  
Bilik 8*

Notes on the Kampong, Compounds, and Houses of the Patani Malay  
Malay village of Banggul Ara, Figures Nos 1-8

space left above (*Tubang Layar*), which may be protected by a separate shield of atap. It will now be seen that on such a roof there are five ridges where the ataps meet; one running the length of the top of the roof, and two sloping downwards and outward from just below either end of this one. The *Përabong Panjang* (24% of the houses were of this type) is the ordinary simple roof made up of two rectangular pents meeting centrally above. Here there is only one long ridge along the top, hence its name. When classifying a house under one or other of these two headings, the main body of the house (*Ibu Rumah*) only is taken into account. Thus a house of the *Përabong Lima* type may have an attached kitchen of the *Përabong Panjang* type, or a reception room of the same type, but the house is still *Rumah Përabong Lima*.

The atap roof may also be of two sorts, obtuse or acute according to the angle between the pents. An obtuse roof is classified as *Tara*, and an acute one is termed *Giruf*, but as all the roofs in the village are obtuse, the *Giruf* roof does not concern us. The most striking thing about the twenty-five houses studied is that every one was orientated east and west, so that the sun in its path across the sky shines in at one end in the morning and in the other end before setting.

There is one pillar (in some cases two) in the construction of the house which is worthy of note. It is the centre upright on the southern side, and is known as the *Tiang Sëri* (see Fig. 10, op.p. 138). If there happen to be an even number of these uprights along the side of the house, then the two centre ones are regarded as the *Tiang Sëri* and are of equal importance. When the house is being built a silver or gold coin (or copper may be used nowadays) is placed in the base of this pillar. Should this not be done it is said that it will be difficult for the house owner to earn and keep money. At least, that is the present day explanation of the custom; but it seems much more likely to be some sort of an offering to the *Sëmangat Rumah* (Soul of the House), who is supposed to live in this pillar when the house is finished. There seems no doubt that this *Tiang Sëri* was of great significance to the olden day Malay, much more so than it is to the present generation. It is the chief pillar of the house, and the whole of the construction of the rest of the house hinges around it. With its two neighbouring pillars it is the first set to be erected when building the house, and a woman must be present to help in actually raising the *Tiang Sëri*; she does not touch the other pillars, only the main one. It is, perhaps, worth noting that it lies to the south, that in the direction of the head of a person when sleeping, for Malays like to sleep in the north south line with the head to the south.

Another old custom, the reason for which the present day Malays say do not know, can be witnessed just before the pillars are

erected. A feast is arranged to which all relatives and friends are invited, but before anything is eaten several things have to be prepared. The wooden or cement blocks which will form the bases of the pillars have been made. The pillars and their two cross beams for either side of the house are nailed together and laid down flat on the ground, one set above the other. Then, when everyone is assembled for the feast, a bowl containing a mixture of rice flour, water and *Daur Tawar China* is produced and certain incantations are recited over it. Next, the feast takes place, after which the rice flour mixture is sprinkled over the uprights and the site of the house. Finally the sets of pillars are erected on their respective blocks. The wife of the builder (usually also the future owner) must help in this last part of the ceremony. A cloth is tied round the centre of the *Tung Sèri* and two young coconuts are attached. The men and the woman take their places and the set of uprights is hoisted up into position. The set containing the *Tiang Sèri*, as mentioned above, must be erected first.

The Malays believe in a variety of spirits and ghosts, some of which are for ever waging war against them. These must be taken into account when building a house. In order to ward off these evil spirits the tops of all the main pillars (not only the centre ones) are covered with squares of red, white and black cloth sewn together one on top of the other. In some of the houses studied there were not three but seven of these coloured cloths, but is more usual to find three. Few of the modern Malays realise the significance of this custom, for it has now become a habit which no one seems to question. But some of the older men remember when no house would be erected without placing such a barrier against those of another world. The Malay word for these squares of cloth is *Bunga Halang*, and many have told me that they are put there merely for decoration, but it seems possible that the original custom may have had some connection with the *Sémangat Rumah*.

The floors of the Kampong houses are made of various different woods. The best are constructed of planks bought from the local Chinese wood merchant, but by far the majority, and especially in the older houses or those belonging to the poorer families, are made of local jungle woods. The stems of the Pinang tree are split longitudinally into four, the inner pith cut away, and the outer sides roughly flattened; these are then placed one next to the other to form a floor. Or the stems of the Ibol tree may be used, in which case they are treated in the same way as the Pinang stems but they are split into six or seven. Bamboo floors are sometimes found, made in the same way as the floors in the long-houses of the jungle folk. The bamboo is split into lengths about one or two inches wide which are lashed with rotan onto the cross-beams beneath. This has been called 'Grid-iron' flooring because of the spaces left between the bamboos. The thorny stem of the Bayas

Palm is also used for flooring; it is split into lengths, the thorns shaved off, and placed bark uppermost onto the cross-beams.

The walling of a house, both inside and out, may be made of a still larger variety of materials. As with the floor, the newer and superior houses use planks, which are usually painted with creosote when finished. If bamboo is used the nodes are haphazardly slit with a knife, and the whole is split open and flattened out to resemble a board. Several of these 'boards' are placed one above the other between uprights, the inside of the bamboo facing outwards. The stem of the Pinang is treated in the same way, but has the pith removed and is placed with the bark to the inside of the house. The Sago Palm (*Rumbia*) stem can also be used for walling, when it is split into four and the wall built by placing one length above the other until the desired height is reached. A more picturesque wall can be made of the leaf stems of the same palm. The leaves which come out from the stem are cut off and the stem itself is peeled off in layers. These layers are then woven into a wall, some of the best examples of which show geometric designs obtained by making use of the dark and the light surfaces of the stems. Other materials which can be used in the same way are the stems of the Bertam Palm leaf, which are peeled off and woven, and lengths of thin bamboo which are flattened out and woven together. Atap is also used for walling, though not commonly. To make such a wall the Salak leaves on one side of the leaf-stem are bent over so that they lie on top of those on the other side. Stems treated in this way are then tied together horizontally one above the other with an inch or two between each stem. When placed in position in the wall space the leaves are on the outside and the stems inside. The leaves of the Bertam Palm can be treated in the same way. The Mahang and Atoh trees provide the most commonly used bark for walling. The bark is stripped off in lengths as wide as possible and is put out to dry. When thoroughly dry these lengths are like thin boards, and are treated as such to make the wall.

The more modern roofs are made of corrugated iron which turns the house into an oven at mid-day. The cooler and better type of roofing material is atap of some sort or other; atap *Rumbia* being the most common, but Bertam, Salak and Nipah Palm are also used. The method for making this roofing material is to cut the leaves from their stems and bind them over a length of bamboo. In the best ataps, two or even three layers of leaves are used. The result is similar to atap walling described above, except that the leaf stem has been replaced by bamboo. In the better type of roofing ataps these bamboo cores are as close together as possible, and a roof made in this way may last for ten years or more. The wider apart the bamboo cores, the lesser the number of these cores and therefore the fewer the leaves and the thinner the thatch. The



ridges on the roof, formed by the junction of two shields of atap, are covered with corrugated iron, old flattened kerosene tins, or with atap leaves laid astride the joint.

From the above it will be seen that the housebuilder has a very wide variety of materials from which to choose for making floors, walls and roofs. And he has the same wide choice of woods for the beams and pillars. The best and longest lasting house pillars are made from the Kulim tree, whose wood is so hard that an inexperienced person has great difficulty in driving a straight nail into it.

The main part of a Malay house usually consists of a sleeping room, or collection of sleeping rooms, and perhaps (only in the poorer houses) the kitchen, all under the one roof. Round this *Ibu Rumah* (Main Body) as it is called, are built a variety of different rooms or small houses in which are the kitchen, the reception room for guests, etc. The position of these additions in relation to the main body is very important, and they all bear specialised names. They may be classified according to their construction and position under three headings (see Figures, p. 129):—

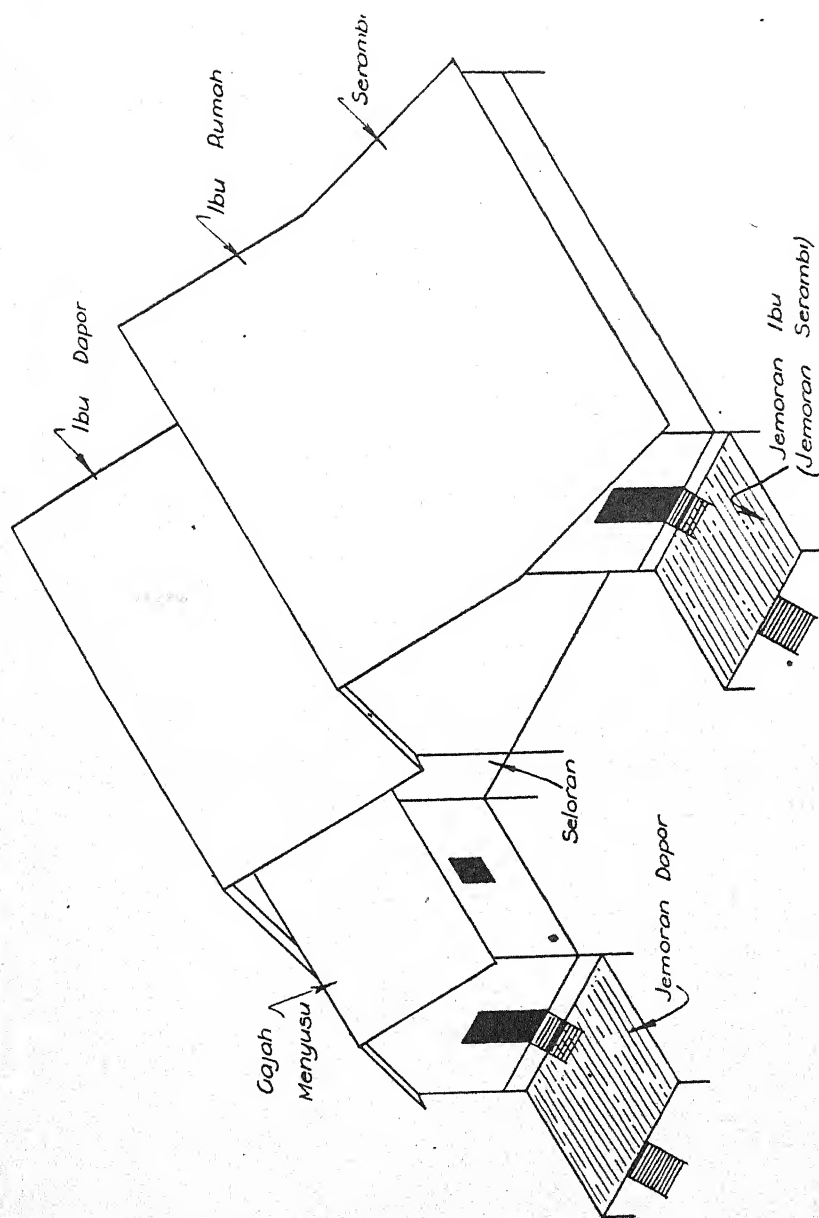
- (a) A raised platform under a one-pent roof, which may be walled or open (though usually walled) running along the whole or part of a side or end of the main body. Its floor is always lower than that of the main body, and it may be of two kinds, a *Sĕrambi* (Figure 5) or a *Pisang sa-Sikat* (Figure 3). The *Sĕrambi* is a reception room for guests and should never be built on the western or eastern end of a house. In fact it is almost always found on the northern side, though there may sometimes be two, one to the north and one to the south (as is common in Negri Sembilan). Secondly the *Pisang sa-Sikat* which is one of the forms of the Kitchen is never built on the southern or eastern side but is generally found to the west.
- (b) A raised walled room under a separate double-pent roof, which is built at right-angles to the body of the house. It is of three forms, *Anjong* (Figure 6), *Gajah Mĕnyusu* (Figure 4), and *Rumah Bilek* (Figure 8). The *Anjong* is another type of guest's reception room and its floor is always on the same level as that of the main house, unless it is built on the eastern end when it may be on a lower level. It can never be built on the western end of the house. The *Gajah Mĕnyusu* is a form of kitchen, whose floor is always lower than that of the main body. It is almost invariably to be found on the western side. The floor of the *Rumah Bilek* is always higher than that of the main house,

and it may be on the northern, southern, or eastern side. It is always a sleeping room, and very often the room reserved for the unmarried females.

- (c) The last class is a raised platform with no walls (the modern edition of the *Rumah Tangga* may have low walls), always on a level lower than that of the main house, and lower than that of the *Sĕrambi*, *Pisang sa-Sikal*, *Anjong* or *Gajah Mĕngusu* to which it invariably leads. It has a low ladder or steps leading up to it, and is of two types, *Jĕmoran* (Figure 9) and *Rumah Tangga* (Figure 7). The *Jĕmoran* has no roof and may be further subdivided into *Jĕmoran Dapor* and *Jĕmoran Ibu*. The former is always constructed up against the kitchen and may face in any direction. It is a platform on which various larger kitchen utensils may be kept and is used for washing plates etc. The *Jĕmoran Ibu* is built at the front of the house and leads up to a *Sĕrambi* or *Anjong*, or else directly into the main body. It is always below the main door of the house which will lead out of one of the above. It may face north or east or occasionally south. It is a verandah pure and simple, on which people may sit and talk in the dry weather. By some people the *Jĕmoran Ibu* is actually further subdivided into *Jĕmoran Sĕrambi* or *Jĕmoran Anjong*, making three kinds of *Jĕmoran Ibu* according to which part of the house it leads. The second type, the *Rumah Tangga*, which differs from the *Jamoran* in that it is roofed, may have a single or double pent roof. It may be on the north, south or east of the house but never to the west (see note Appendix C). Like the *Jĕmoran Ibu* it is a verandah usually leading up to a *Sĕrambi* or *Anjong*.

In the above descriptions I have tended emphasise the positions of the different rooms and verandahs because formerly this was a very important factor. Nowadays, however, customs are not held so strictly and the position of the door and rooms is gradually tending to depend more and more on the whereabouts of the nearest path or road. A glance at the Appendices at the end will show that they have not altogether abandoned their old traditions in this respect.

So far, only the construction and the position of the various components making up the house has been dealt with. To complete the picture it is necessary to give a more detailed description of the individual rooms and the uses to which they are put. Every Malay house is made up of three main features, all of which have been mentioned earlier, they are the sleeping quarters, the kitchen and the place for the reception of guests.



A PATANI MALAY HOUSE SHOWING THE COMPONENT PARTS 9  
Notes on the Kampong, Compounds, and Houses of the Patani Malay village of Banggul Ara, Figure No. 9.

The sleeping quarters are usually in the body of the house, but in a few cases a separate sleeping room is added called the *Rumah Bilek*. The mother and father of the household, together with the babies and younger children sleep in one part of the main room. The elder unmarried daughters have a special room, or part of the room to themselves, which may be merely screened off with a hanging cloth. They may even sleep in a *Rumah Bilek* if there is one, but originally they slept in what was called a *Para*, or attic, built in the main sleeping room under the eaves of the roof. Access was gained up a ladder and through a trap door, the former being taken away during the hours of sleep. A survival of this 'virgin's loft', which in one form or another has a very wide distribution among primitive peoples throughout the world, may be found in the present day *Para*. This is a loft above the sleeping quarters in which cakes and other foodstuffs are kept on the night before a marriage, two people sleeping there to look after the goods. At other times it is used for the storage of goods and chattels. The unmarried boys may also sleep in a special place, but this is not so strictly enforced. They generally sleep outside in the guest's reception room. Very small babies have cradles (*Nou*) made of a length of cloth which swings from a beam above. Male guests and casual visitors sleep in the reception room, but females may sleep in the main room with the mother and father.

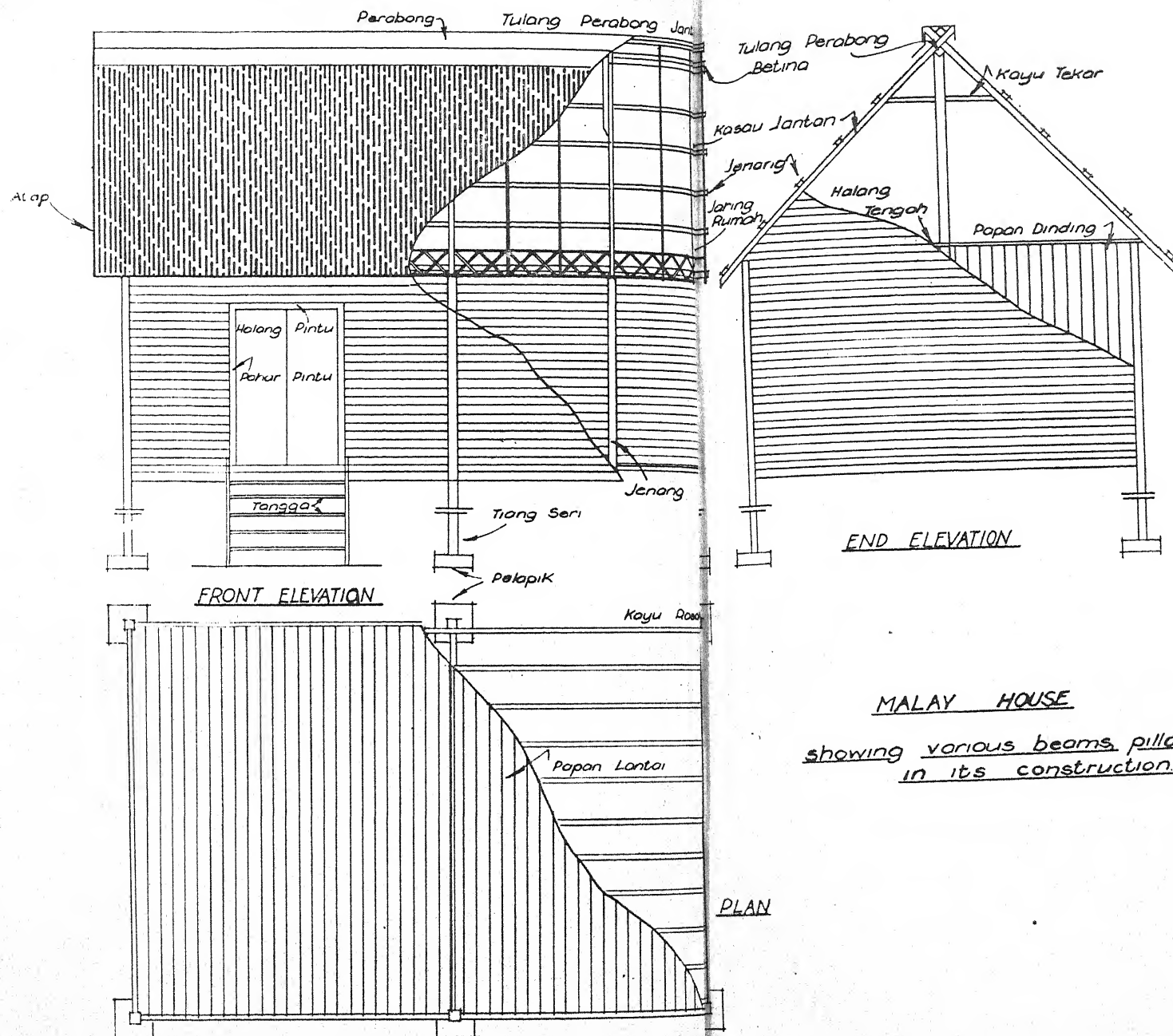
The kitchen, or *Dapor*, is almost invariably built onto the western end of the house, very rarely one sees one facing north and never south or east. It may be another room under a separate roof, or it may be, in the very poor houses, at the other end of the sleeping room. In a very few cases it is a completely separate house built above or directly onto the ground. When above ground level it is known as *Rumah Dapor* and when actually on the ground, *Dapor Tanah*. These two are usually situated a short distance from the main building and may be linked to it by a covered way. The *Pisang sa-Sikat* is another form of kitchen built under a single pent. A fourth type is the *Gajah Mēnyusu* which sticks out from the main body of the house. This type of kitchen is very common especially in the better built and more modern houses. Leading up to the kitchen there may be a *Jēmoran Dapor*, used mostly by the women. The kitchen is regarded as the women's part of the house; the male occupants have free access, but male guests unless they are very old friends of the family keep strictly out of both kitchen and sleeping quarters. Most *Dapors* have a grating of wood in the floor, through which water and refuse is thrown to the waiting chickens and ducks beneath. The fireplace where all the cooking takes place may be of two kinds, either directly on the floor or raised up on four legs. It consists of a framework of wood containing about six inches of earth on which may rest three or six stones. The fires are kindled usually with waste rubber or

kerosene and wood between these stones on which rest the cooking pots. Above the fireplace there is often a broad shelf used as a 'safe' for foodstuffs since the smoke from beneath keeps away flies and ants etc. The kitchen furniture will be dealt with further on in this paper.

The place for the reception of guests may be of various kinds each of which has a different name. The long verandah or *Sĕrambi* is often found especially in the poorer houses. Those people with more money usually prefer to build an *Anjong* for the reception of their guests. These are the only two real reception rooms, the others, the *Jĕmoran*, the *Ibu Dapor* and the *Rumah Tangga* are more subsidiary places and were not originally meant for receiving guests. Male visitors are regularly received in the reception room, but females are often entertained in the kitchen or *Ibu Dapor* if there happens to be one. To the ordinary visitor the reception room is the only part of the house which he sees. All the social side of kampong life takes place here, feasts, gatherings, meals and even prayers. A very few houses have no special room for these activities, in which case the main body has to be used.

The various rooms of the house are lighted by small windows which are closed at dusk, or by long horizontal slits in the bamboo of the poorer houses. At night cheap Chinese-made kerosene lamps (*Pĕlita Ayam*) are used. They have a naked flame, are often top heavy and would seem to be highly dangerous in houses of such easily combustible material as dry planks or bamboo and atap. However in spite of this Malay houses very rarely get burnt down. In all the rooms of a house, at the junction of the walls, inner or outer, with the floor, there is a horizontal piece of wood running the length of the wall, usually lying immediately above a larger beam under the floor boards. It is something like a skirting board but thicker and generally much more massive. Its Malay name is *Kayu Bendui* (Figure 10) and there is a belief in the Kampong that no one should ever sit upon any of these boards, especially the one across the door entrance, because the *Sĕmangat Rumah* will not approve.

Before getting on to the household furniture, there is one interesting belief with regard to the ladders or steps which lead up to a Malay house. It will be found that they never have an even number of rungs, usually three or five and very rarely seven, though I have never seen a seven rung ladder in Kampong Banggul Ara. The explanation of this fact, according to the villagers, comes from the belief that an even number of steps is unlucky and that some accident or mishap will surely occur to anyone who treads on the even step.



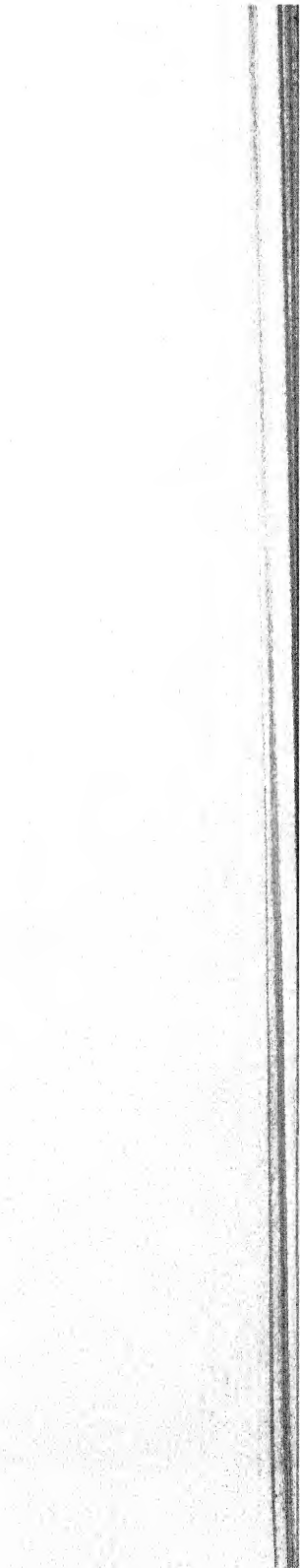
END ELEVATION

MALAY HOUSE

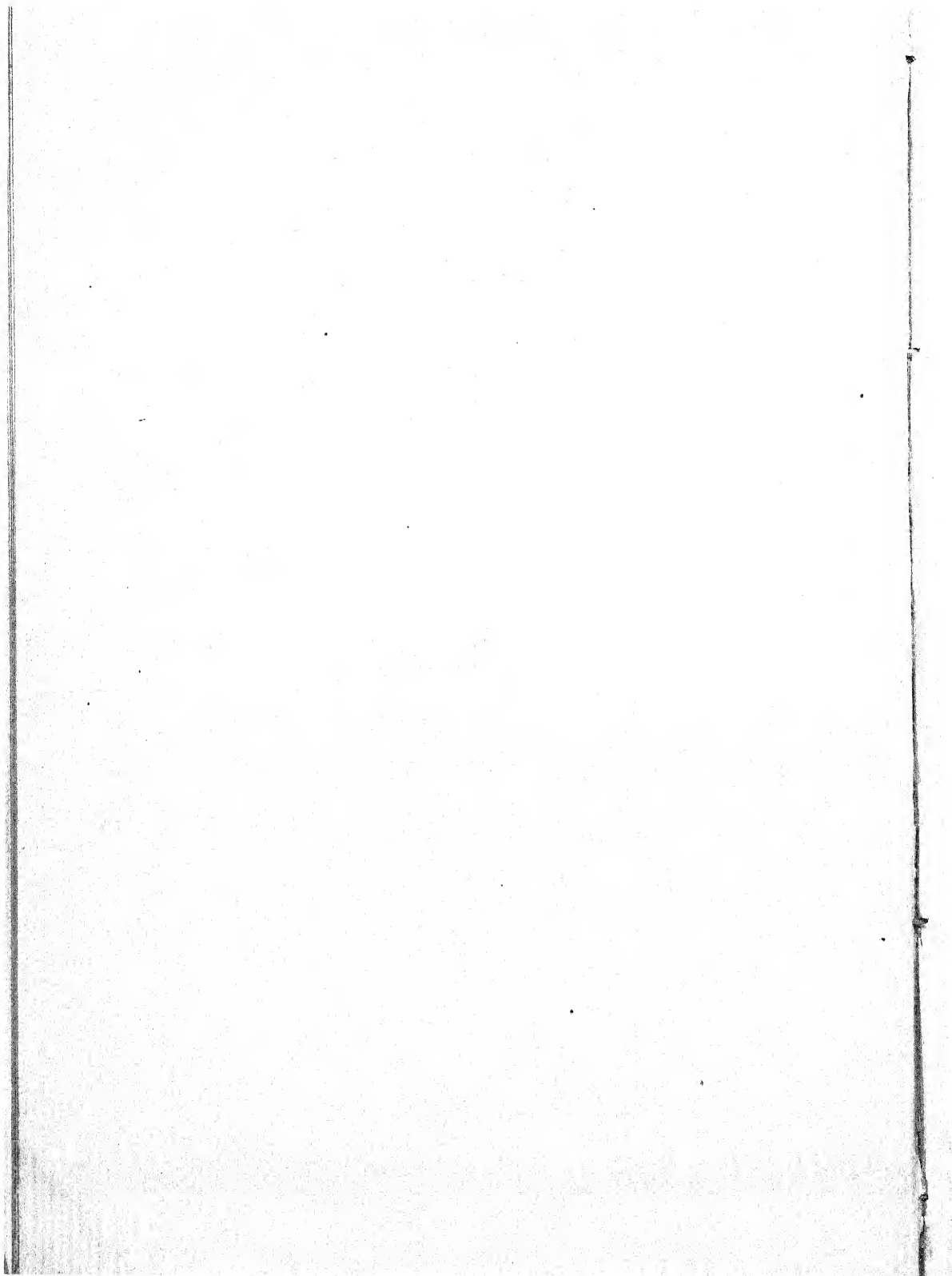
showing various beams, pillars etc  
in its construction.

PLAN

Notes on the Kampong, compounds, uses of the Patani Malay  
village of Bangkul Arat No. 10.







### HOUSEHOLD FURNITURE

It is worthy of note that most of the Malay names for articles of furniture are borrowed from other languages, indicating that such articles were entirely alien to Malay culture and that the already existing names were taken into the language from Portuguese, Tamil, Arabic etc. In many of the older houses and in those of the poorer people there are very few pieces of furniture to be seen, but in some of the more modern ones (and this may be quoted as an example of what material horrors culture contact can sometimes produce) one sees chairs, tables, shelves, cupboards, ancient iron bed-steads and numerous other bulky items cluttering up the various rooms, while the walls are littered with cuttings from magazines and newspapers, or 'photographs of the owner by a Chinese perpetrator and oleographs of Queen Victoria or the Sultan of Turkey', as Winstedt so aptly describes it. One must, indeed go to the poorer houses to see articles of Malay furniture really in evidence. The first thing which strikes the visitor on entering such a house is the number of mats (*Tikar*) lying about on the floor or rolled up and neatly tucked away in some corner. These mats are made by the women from Mengkuang leaves which are also used for making many other articles including bags for storing rice, lids for covering plates etc. Some of the mats are coarse, some are finely made, some are single, others are double, while still others have delicate designs woven into their fabric. The double ones are usually used for sleeping mats, the under layer being large and rather coarsely made, on top of which is sewn a smaller and more finely woven mat sometimes bearing coloured designs. The edges of the upper mat are usually bordered with coloured cloth and the whole is called *Tikar Kumpor*. The ordinary single mats are spread over the floor of the reception room and act as seats, carpets, tablecloths and beds if the necessity arises. Somewhere in the house there is bound to be a praying mat or *Kain Jadah* made of a special cloth supposed to originate from Mecca, and finely embroidered in many colours.

In the sleeping quarters there may be a *Gěrai*, which is a special bed made of bamboo or planks raised slightly off the ground, on which women giving birth must sleep. Here they remain for the prescribed length of time after parturition. The sleeping places are sometimes screened off by mosquito nets, or there may be cloth hangings to break the room into cubicles. All the clothes of the family are kept in this room, perhaps neatly folded and piled in wooden shelves, but more likely hanging in clusters from pegs on the wall.

In the kitchen there is generally a rough wooden shelf or two, or in the newer houses a sideboard complete with plates, saucers, cups, bowls, glassware etc. But amongst this mass of cheap foreign material one can pick out the remnants of the older culture. Coco-

nut containers (*Gělok*) are still used as receptacles for bailing out water, or keeping it in, and half-coconuts with long wooded handles (*Chěbok*) serving as ladles, are still to be seen. There will also be a coconut grater (*Kukurān*) made of a length of thick wood with an upward bend at one end armed at its upper extremity with a semi-circular iron-toothed blade. When using this instrument the person sits on the other end to hold it firm. Another item common in the Dapor is a large tray, circular in shape and made of either copper or enamelled metal, on which the little plates of food are placed ready for the meal. When the meal is ready this is covered with a conical shaped lid (*Tudong Saji*) made of Mengkuang leaves, and either plain or highly coloured with pieces of silver paper and coloured paper or cloth.

Water is sometimes kept in an earthenware container called *Labu Tanah*, which as its name suggests is the more recent form of the old hollowed-out bottle-gourd. At the bottom of the steps leading up to the house there is a large earthenware ewer or *Těmpayan* containing water with which to wash the feet before ascending the ladder. Every house has some form of betel nut tray (*Chěranan*), either homemade from an old box or tin or a special tray containing several small receptacles for the various ingredients. Together with this goes the *Kachip* or scissors for cutting the areca nut. Those older people who have lost their teeth use the *Gobek Pinang* to pound the areca nut, betel leaf, gambir and lime. This is a long cylinder of thin bamboo open at the top with a small hole in the node at the lower end. The pounder is a rod of iron with a wooden handle. A cylindrical piece of wood which just fits the bamboo is pushed down to block up the hole at the lower end, the ingredients inserted and pounded with the pestle. The rod is then extracted and a thin piece of wood pushed into the small hole in the node, the cylinder forced upwards and the pounded mixture taken out.

Other items of everyday use are stone pestles and mortars, usually of Chinese manufacture and called '*Batu Lěsong*' which may be used for pounding a variety of substances; and the roller and slab type of grinder (*Batu Běgilin*) which grinds finer than the pestle and mortar, and is invariably found in the kitchen.

The space under a Malay house is known as *Tapak Rumah* and is used for many purposes. Sometimes the foot pounder is built here so that the women folk can work in the shade and because the mortar may be kept dryer in wet weather. In the space not taken up by this pounder, a variety of items are stored, sugar-cane presses, old beams, atap, firewood, bicycles or agricultural implements. In the heat of noon the under part of the house is frequently used for shelter from the sun's rays, and the family will squat here at their various duties and amusements. Finally, to

complete the picture, there is the kitchen drain, which in some houses takes up quite a considerable portion of the 'basement'. From the kitchen up above most of the refuse is dropped through a grill in the floor so that the otherwise dry earth becomes saturated and soon turns into a quagmire of filth. Chickens, goats and ducks wallow in it, picking out what edible waste they can find. It is seldom if ever cleaned, and one rarely sees a run-way cut down which the water could escape. Otherwise the house above is kept moderately clean, and in plank floors a small portion of board is removable so that dust may be swept through. The floors of other materials usually have enough space between the laths to allow refuse to fall through. Some of the more modern houses have a cement layer on which the house pillars rest with a channel sunk in to take off the liquid waste.

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In the text above I have given the Patani Malay terms, as used in Kampong Bangiul Ara, for the various items. In many cases these are the same as the Perak Malay, but in some instances the words are completely different. Any reference to 'Malays' refers only to the Patani Malays of this district, for the term *Orang Melayu* as currently used covers a population acknowledging one creed but of diverse physical and cultural origin. Regional variations are, in some respects, considerable, though up to now they have probably not been sufficiently appreciated, except possibly in the study of the dialects.

**Appendix A.**  
**A Detailed Study of Twenty-Five Houses in Kampong**  
**Banggul Ara.**  
**1. Main Body.**

House No.	Type	Orientation	Floor	Walls	Roof	Divisions	Direction of door
1	PP	EW	pl.pn	bb	ar	no	N
2	PP	EW	pl.pn	bb	ar	no	—
3	PP	EW	i	b	ar	no	—
4	PP	EW	pl	ma.at	ar	no	—
5	PP	EW	pl	pl.bb	ar	no	N
6	PP	EW	pl	pl.	ar	no	—
7	PL	EW	pl	b	ar	no	—
8	PL	EW	pl	pl	ci	yes	—
9	PL	EW	pl	pl	ar	no	—
10	PL	EW	pl	pl	ar	no	N
11	PL	EW	pn	pn	ar	no	S
12	PP	EW	pn	at	ar	no	—
13	PP	EW	pn	bb.ci.pl	ar	yes	—
14	PP	EW	pl	pl	ar	no	—
15	PP	EW	pl	bb	ar	no	—
16	PP	EW	pl	bb	ar	no	—
17	PP	EW	pl	bb	ar	no	—
18	PP	EW	pl	pl.bb	ar	no	S
19	PP	EW	pl	bb	ar	no	S
20	PP	EW	pl	pl	ar	no	—
21	PL	EW	pl	pl	ar	yes	N
22	PL	EW	pl	pl	ar	yes	E
23	PP	EW	pl	pl	ar	yes	—
24	PP	EW	pl	b	ar	no	N
25	PP	EW	pl	pl	ar	no	—

*Notes*—Only five of the houses have divisions in the main body. The position of the door out of the main body is given only when it leads directly onto a Jëmorān, a Sërambi without walls, a Rumah Tangga, or a ladder which goes straight down to the ground; that is, when it forms the main door of the house.

*Legend*—This legend applies to the whole of Appendix A.

PP	— Përabong Panjang	JA	— Jëmorān Anjong
PL	— Përabong Lima	pl	— Planks
PSS	— Pisang sa-sikat	bb	— Bamboo
RD	— Rumah Dapor	pn	— Pinang Stems

GM	— Gajah Mēnyusu	i	— Ibol Stems
ID	— Ibu Dapor	m	— Mensirai Stems
Sr	— Sērambi	b	— Bertam Walling
A	— Anjong	at	— Ato Bark
RB	— Rumah Bilek	ma	— Mahang Bark
RT	— Rumah Tangga	ar	— Atap Rumbia
MB	— Main Body	ci	— Corrugated Iron
JI	— Jēmoran Ibu	N	— North
JD	— Jēmoran Dapor	S	— South
JSr	— Jēmoran Sērambi	E	— East
		W	— West

## 2. Kitchen.

House No.	Type	Position A	Floor	Walls	Roof	Direction of door @
1	PSS	W	pn	bb.at	ar	S
2	PSS	W	pn	bb	ar	S
3	GM	W	i	bb.b	ar	N
4	GM	W	pn	ma.at	ar	N
5	GM	W	pl	pl	ar	N
6	GM	W	i	bb	ar	N
7	PSS	S	pl	bb	ar	E
8	RD	S	pl	pl	ci	S,E (two doors)
9	RD	W	pl	bb	ar	—
10	RD	W	pn	at	ar	N
11	GM	W	pn	bb	ar	S
12	PSS	W	i	bb.b	ar	N
13	GM	W	pn	bb	ar	N
14	GM	N	pn	bb	ar	N
15	GM	W	pn	bb	ar	S
16	PSS	N	pn	bb	ar	E
17	RD	N	pn	bb	ar	E
18	GM	N	pn	pl	ar	E
19	RD	N	pn	bb	ar	W
20	RD	W	pn	bb	ar	W
21	GM	S	pn	pl	ar	E
22	RD	W	pl	pl	ar	S
23	GM	S	pl	pl	ar	W
24	GM	W	pn	bb	ar	N
25	GM	W	pn.i	bb.b	ar	S

Notes—A—in relation to the main body.

@—in relation to the kitchen.

## 3. Reception Room.

House No.	Type	Position A	Floor	Walls	Roof	Direction of door or ladder @
1	Sr	N	pn	—	ar	—
	Sr	S	pn	bb	ar	—
2	A	N	pn	bb	ar	E
	Sr	S	pn	bb	ar	—
3	Sr	N	bb.pn	bb.b	ar	E
4	A	N	pn	ma.at	ar	E
	RT	NE	pn	—	ar	—
5	RT	N	pl	pl	ar	E
6	A	N	pl	pl	ar	W
	RT	N	i	—	ar	N
7	Sr	N	pl	pl	ar	E
	RT	NE	pl	—	ar	N
8	A	N	pl	pl	ci	N
9	A	S	pl	pl	ar	S
	RT	S	pl	pl	ar	S
10	Sr	N	pl	—	ar	—
	RT	NE	pl	—	ci	E
11	Sr	N	pn	pn.bb	ar	—
12	Sr	N	pn	at	ar	W
13	Sr	S	pn	pl.bb	ar	E
14	A	S	pl	pl	ar	E
	ID	N	pl	pl	ar	—
15	A	S	pl	pl	ar	E
16	A	S	pl	pl	ar	E
17	A	S	pn	bb	ar	E
18	A	S	pl	pl	ar	—
19	RT	S	m	bb	ar	E
20	Sr	N	pl	pl	ci	—
	RT	NE	pl	pl	ci	E
	A	S	pl	pl	ar	—
21	RT	N	pl	pl	ar	—
22	ID	W	pl	ci	ci	S
23	A	N	pl	—	ar	E
24	A	S	pl	b	ar	—
25	RT	E	pl	bb	ar	E

Notes—A—In relation to main body.

@—In relation to the Reception Room.



**4. Extra Sleeping Room.**

House No.	Type	Position A	Floor	Walls	Roof
4	RB	E	pl	ma.at	ar

*Note*—A—In relation to the main body.

**5. Verandah (1)**

House No.	Type	Leading to	Position @	Floor	Position of ladder X
1	JI (JSr)	Sr	N	pn.bb	N
2	JI (JA)	A	E	pn	E
3	JI (JSr)	Sr	E	pn	N
13	JI (JSr)	Sr	E	pn	S
18	JI	MB	S	bb	E
24	JI	MB	N	bb	E

*Notes*—@—In relation to room in preceding column.

X—In relation to Verandah.

**6. Verandah (2)**

House No.	Type	Leading to	Position @	Floor	Position of ladder X
1	JD	PSS	S	pn	S
2	JD	PSS	S	pn	S
3	JD	GM	N	pn	N
4	JD	GM	N	pn	N
6	JD	GM	N	pn	N
8	JD	RD	S	i	—
10	JD	RD	N	pn.bb	N
11	JD	GM	S	pn	S
12	JD	PSS	N	pn	W
13	JD	GM	N	pn	N
14	JD	GM	N	i	W
16	JD	PSS	E	pn	—
17	JD	RD	E	bb	E
18	JD	GM	E	bb	E
19	JD	RD	W	pn	W
20	JD	RD	W	pn	N
21	JD	GM	E	bb	N
23	JD	GM	W	m	S
25	JD	GM	S	pn	E
9	JD	RD	S	bb	S

*Notes*—@—In relation to room in preceding column.

X—In relation to Verandah.

## Appendix B.

**The Materials used in the construction of the various  
Componants of the Twenty-Five Houses.**

	Planks	Pinang stems	Ibol wood	Bamboo	Bertam	Bark	Corrugated iron	Other wood	Atap rumbia
<b>MAIN BODY</b>									
Floor	78%	18%	4%	—	—	—	—	—	—
Walls	44%	3%	—	30%	10%	10%	3%	—	—
Roof	—	—	—	—	—	—	4%	—	96%
<b>KITCHEN</b>									
Floor	23%	62%	15%	—	—	—	—	—	—
Walls	20%	—	—	57%	10%	13%	—	—	—
Roof	—	—	—	—	—	—	4%	—	96%
<b>RECEPTION ROOM</b>									
Floor	61%	30%	3%	3%	—	—	—	3%	—
Walls	52%	3%	—	29%	6%	10%	—	—	—
Roof	—	—	—	—	—	—	14%	—	86%
<b>VERANDAHS</b>									
Floor	—	61%	7%	29%	—	—	—	3%	—

## Summary of Above:—

<i>Floors</i>	Pinang is used in	42.8%
	Planks are „ „	40.5%
	Bamboo is „ „	8.0%
	Ibol is „ „	7.2%
	Other woods „ „	1.5%
<i>Walls</i>	Planks are used in	38.7%
	Bamboo is „ „	38.7%
	Bark is „ „	11.0%
	Bertam „ „	8.6%
	Pinang „ „	2.0%
<i>Roofing</i>	Corrugated Iron	1.0%
	Atap rumbia is used in	92.7%
	Corrugated iron „ „	7.3%

## Appendix C.

**A Summary of the Positions of the Componant Parts of the  
Houses in Relation to the Main Body, and the Orientation  
and Type of the Latter.**

**Main Body.**

100% are orientated East-West.  
76% are of the Përabong Panjang type, and  
24% are of the Përabong Lima type.

**Kitchen Group.**

(Pisang sa-sikat, Gajah Měnyusu, and  
Rumah Dapor)

64% are situated WEST of the Main Body,  
20% are situated NORTH of the Main Body,  
16% are situated SOUTH of the Main Body.

**Reception Room Group.**

(Sěrambi, Anjong, Rumah  
Tangga, & Ibu Dapor)

46% are situated NORTH of the Main Body,  
37% are situated SOUTH of the Main Body,  
11% are situated NORTH-EAST of the  
Main Body,  
3% are situated EAST of the Main Body,  
3% are situated WEST of the Main Body.

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*Note*—In two of the houses there was what is called an *Ibu Dapor* (See Figure 9), which is a room under a double pent roof with walls and very similar in construction to the Ibu Rumah. It is joined to the latter side by side, and the gutter formed by the junction of the two pents (one from the Ibu Dapor, the other from the Ibu Rumah) is termed *Sěloran*. It forms the ante-room to the kitchen and is therefore often described as the 'women's reception room'. In the reception room group above the one facing west is one of these. Those facing north-east are Rumah Tanggas which may not lie directly north, south, or east of the main body.

## Timogan Genesis

By J. & D. HEADLY

(Received, February 1948)

"And the Waters prevailed exceedingly upon the Earth; and all the high hills, that were under the whole heaven, were covered".  
Genesis 7, 19.

*The Timogans are a Section of the Muruts who live in and around the Tenom plain of North Borneo. In former days they hunted heads according to Murut custom, wore the chawat or loin cloth, armed themselves with blowpipes and magnificent swords and carried finely worked wicker shields. They lived in long-houses carried planted hill padi and tapioca.<sup>1</sup>*

*In view of the following story it is interesting to note that Timug in their language means water, so that one can call them "the People of Water" or perhaps even the "Water Gypsies". It should also be noted that there are clear indications that the whole of the Tenom plain was once a lake.*

*Dualis the native chief of the Timogans told us the following story about the origins of his people.*

Long, long ago there was a big flood in Borneo. It was so big that the whole country was covered with water save for one very very tall coconut tree. All the TIMOGANS were drowned save one young man who was lucky enough to be near this coconut tree when the water began to rise, and he managed to climb it. There he clung for seven days and seven nights living on coconuts. On the eighth morning he noticed that, when he threw away the coconut he had drunk for breakfast, it made a good solid thud. The tree was such a tall one that he could not see the ground very well so he threw down a few more coconuts; as they all made satisfying solid thuds he felt assured that the flood had receded, and climbed down.

He felt rather lonely after his week in the coconut tree so he started walking round looking for his family and friends, but of course he found no one as all the Timogans except he had been drowned.

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<sup>1</sup> Rutter, *The Pagans of North Borneo*, 1929, p. 35, give details of the Distribution of the Timogan Murut, and on subsequent pages in the same work additional data on their customs, etc. (Hon. Editor, J.M.B.R.A.S.)

All the good fairies in the sky had been very worried about the flood; they had flown hither and thither looking at the rising waters and felt sure that no one in Borneo could possibly have survived. When the flood subsided, one fairy spinster, who had a particularly inquisitive nature flew down to the earth to see for herself what had happened. Whilst walking along having a look at things she met the Timogan youth. Now he was a very good looking Timogan and, thinking how nice it would be to marry him and take him back to her father's fairy long-house in the sky she said to him "Hlai Timogan, it is very lonely here in Tenom now that everyone else is drowned; only we two are left; so let's marry and live happily ever afterwards." But our Timogan looked at her and saw that she had very bad skin disease and was also ugly, and although he felt lonely after his week up the coconut tree he was not as lonely as all that. And he had heard his father say things about inquisitive spinsters in their long-house before the flood came. So he very firmly but quite politely said that he was very honoured but that he didn't believe that every other girl in Borneo was dead and would like to make certain first before he took her hand in marriage.

The fairy was very angry but could not persuade him to marry her; and off he went on a tour of Borneo. The fairy waited in Tenom, but having much the same feelings as mortal women, became very bad tempered as the days passed and the Timogan did not return to her. At last, she became so angry that she resolved to have her revenge. This she did by making an image of herself in Tenom clay; it was such a good image that it even included the skin disease. She then spat on it, which gave it life (and colour, for she had been chewing betel nut). Well satisfied with her work she spread her wings and flapped back to her father's fairy long-house in the sky.

Several weeks later a thinner and sadder Timogan returned to Tenom resigned to the fact that an ugly bride with skin disease was better than no bride at all. There he found what he thought was the fairy, and married her and had lots of children; and all the Timogans now alive are descended from them.

So you see it was a very good thing the fairy was bad tempered. Had he married her he would have gone to live with her in the sky and there would have been no Timogans. But as even Timogans cannot have their cake and eat it, many of them have skin disease today.

## Notes on Archaeology from the Air in Malaya.

By P. D. R. WILLIAMS-HUNT, F.S.A., F.R.A.I.

(Plates 5—8)

(Received, March, 1948)

In Europe the last three decades have seen the rise and development of air search, both visual and photographic, for the location of archaeological sites. This technique has led to some remarkable results, and but for it many sites of the first importance would have remained undiscovered. But hitherto in the Far East very little work of this nature appears to have been undertaken, and there is only one recorded instance of air photographs being employed in Malaya.<sup>1</sup> In England and Italy the Air Ministry has generously allowed archaeological schools to gather together magnificent collections of air photographs for the study of archaeological sites,<sup>2</sup> but unfortunately similar facilities have not been made available for Malaya. However the writer, in his Service capacity, has had access to a large library of local photographs, has undertaken a great deal of flying himself, and has been allowed by the Air Ministry to publish photographs of archaeological interest.

It must be said at once that results in Malaya are disappointing after finding many hundreds of new sites in Siam. The existing air photographic cover of Malaya is by no means complete, but there is sufficient to extend over most of the areas of Indian colonisation described by Dr Quaritch Wales in earlier numbers of this journal. Not one of these sites shows on air photographs, nor, in the case of Kota Tinggi and Johor Lama, does a visual inspection from the air provide any additional information. Originally it was the intention to describe the technique of air archaeology in some detail but there is little point in elaborating methods which are unlikely to be of value, and the readers' attention is invited to the select bibliography appended. Actually there is no reason why sites should not show from the air in Malaya, always provided they are of sufficient size to make some impression on the local vegetation, and it is hoped that something may yet be found. In particular air photographic cover of Eastern Malaya is virtually non-existent, and the frequent incidence of place names incorporating the word "Siam" makes it very desirable that this area should be fully investigated. For this reason a general outline of sites in Siam together with

<sup>1</sup> P. V. Van Stein Callenfels, O.B.E. An Excavation of three Kitchen Middens at Guak Kepah, Province Wellesley, Straits Settlements. Bulletin of the Raffles Museum, Series B, No. 1, 1936.

<sup>2</sup> Report of the Curator of the Pitt Rivers Museum (Dept. of Ethnology) for the two years ending 31 July, 1946.

comments on similar possibilities for Malaya is given below. Furthermore in the absence of adequate mapping, air photographs can be employed to produce topographical information which may govern the location of sites. This application is of some importance in Malaya and is described and illustrated in the following pages.

In Siam certain types of sites show very clearly from the air. Since many early Siamese structures were of wood these sites are necessarily limited to fairly substantial works. They may be conveniently tabulated as follows:—

**Crop-mark Photography** — that is sites which show by the effect caused on the overgrowing vegetation. Hard surfaces—walls, roads and floors—retard growth and produce “negative crop-marks.” Moisture retaining features—ditches, pits and the like—promote growth and produce “positive crop-marks.”

In suitable areas, such as recently abandoned paddy fields, negative crop-marks tend to show as light toned areas whilst the denser growth over the more moist features usually produces much darker tones. Negative crop-marks will not show in thick jungle but such features as town ramparts, banks of field systems, temple platforms and large irrigation tanks may show quite clearly by denser tree formation. A number of early town sites in Eastern Siam and some of the temples at Angkor can be traced in this way.

In Malaya, provided the site is of sufficient size, there is no reason why remains should not be traced by crop-marks. *Lalang* and *bélukar*, however, are not satisfactory recording mediums.

**Shadow Sites** show from the air when slight mounds marking ancient works are caught by a rising or setting sun. Dense vegetation will obscure this feature and it is not very likely to occur in Malaya.

**Trading Town Development.** This is an application of air photographs which is particularly useful in Siam where many ancient towns remain unmapped.

Malacca is the only town in Malaya to which this technique might be applied and a comparison between early maps and recent air photographs shows that all indications of former work have completely vanished. That is, nothing shows from the air which is not already perfectly obvious on the ground. Nor are air photographs of help in examining Fort Canning, Singapore.

**Jungle Search.** This is another use for the air approach. On the ground one may easily pass within a few yards of a major



archaeological site and suspect nothing. By air search it is possible to cover an area in a few hours which would take as many months on the ground with the added assurance that any substantial remains are bound to show.

**Disturbance of Paddy Fields.** This often provides a clue to a variety of sites. The irrigation of paddy fields depends on a careful graduation of levels, and old works are likely to be avoided even if nothing appears above ground level. Any peculiar variations in the layout of fields should be investigated on the ground since many sites in Burma and Siam show in this way.

**Swamp Areas.** For various reasons formerly populated areas have become swampy. It is often possible to trace former canals and field systems under the present water level through the medium of vertical photographs. In particular the Tasek Bera area of Pahang with its "Parit Siam" merits examination but, at the time of writing, photographs are not available of this area.

A number of early sites in Malaya are situated in caves. It is quite impossible to see a cave on a vertical air photograph, and very unlikely that it will show on an oblique one unless the mouth is unobscured by trees or bushes. However, the geological structure of hills can often be determined from air photographs, and possible cave-bearing areas plotted. This comes under the heading of topographical interpretation, discussed below, rather than direct recognition of archaeological sites.

So much for the location of archaeological sites seen as such from the air. There is no doubt that sites will show from the air in Malaya provided they are of sufficient extent. True results to date are not very satisfactory but, so far, both the state of archaeological research on the ground and the extent of air cover are limited. From time to time reports of finds of early Chinese pottery come from the almost unknown eastern half of Malaya and the numerous "Siams" here indicate former Khmer or Siamese influence. This Eastern region is undoubtedly an area for future examination from the air.

Now many archaeological sites are governed in their location by certain topographical features which will often show from the air yet not appear on the standard large scale map series. When air photographs of a known archaeological site are available it is possible to locate other areas fulfilling the same topographical requirements. Of course these other sites will have to be checked on the ground and may prove sterile, but the employment of this technique should eliminate much searching of unsuitable areas. As will be seen by the following examples, the employment of air photographs for this method of search is not so complicated as

might be imagined. However, it does call for some experience in the handling of vertical cover.

Around the shores of Singapore and the southern coast of Johore are traces of a culture characterised by partially ground stone axes, flakes and microliths not unlike those of the Australian aborigines. The key site at Tanjong Bunga was excavated before the war by Mr H. D. Collings of the Raffles Museum, but still awaits publication. A single axe was recovered during the last century, and recently Mr Collings and the writer working together have noted four new sites. All these sites have been on old beaches. Since beaches are inclined to change their outline, it follows that it is of some importance to determine which are modern or undergoing change, and which appear ancient and static. In southern Malaya both modern and ancient beaches tend to be covered with mangrove, which may either confine itself to patches on the old beach or advance, leaving it behind. Where the mangrove advances a time may come when a second beach is built up at some distance from the original. It is seldom possible to distinguish the former beach line on a map but it will show very clearly from the air. Plate 6 shows this feature along the south-west coast of Johore. Here the mangrove growth is in a comparatively early stage and the outer beach has yet to form. In this example there is no difficulty in determining which is the former beach line.

Further up the coast of Malaya and particularly along the coasts of Perlis, Province Wellesley and Kelantan, a more rapid form of build-up occurs. The silt brought down by the rivers spreads along the coast forming sand-coated mud-bars backed by shallow lagoons. In course of time the lagoons silt up with decayed vegetation, a new bar forms and the process repeats itself. In this way outlying islands become absorbed into the mainland, and there are references in the Malay Annals to such occurrences. The best air photographs of this feature which are now available cover the Songkhla area of Southern Siam (Plate 7). The sand bars and silted lagoons show as a series of dark and light lines, once again a features which does not appear on the map. In Malaya the mouth of the Muda River is especially prone to this type of build-up and Plate 8 shows bars in the process of formation. Without further research it is impossible to state the speed at which these bars form. It obviously depends on a number of features including, amongst the more important, the amount of tin mining in progress along the upper reaches of the river concerned. The main problem for the archaeologist is to determine which was the beach at a given period and this can only be found by careful ground checking, although reference to early maps and geographical accounts may prove helpful. This beach build-up is doubtless the explanation of the curious location of large kitchen middens. Several of these, almost entirely composed of sea shells, have been found

to contain larger middens than could reasonably have been expected to accumulate had they always been at their present distance from the sea. The location of middens in the open is a difficult problem, since they tend to become overgrown and invisible from the air. In this respect the working of middens for lime is a distinct advantage from the air photographic viewpoint though, no doubt, few archaeologists working on the ground would concur. The solution is to investigate any mound seen along a former beach line.

To summarise, air photographs can assist materially in locating sites provided certain conditions are met. These are:—

1. The knowledge that archaeological remains exist in the area under consideration provided by historical records, casual finds or photographs of a key site.

2. Some slight skill in photographic interpretation on the part of the user.

3. Subsequent confirmation by a ground check. As already noted, the characteristic rugged features of limestone hills with possibility of caves can be seen from the air.<sup>1</sup>

### Explanation of Plates.

*(Plates 6-8 are from official photographs, Crown Copyright Reserved)*

Plate 5. Makan Sultan, Kota Tinggi, Johore. This site continues to produce large quantities of pottery and other material dating from the Han period to the end of the eighteenth century, and has obviously been a town of major importance. The air view fails to reveal any feature not apparent on the ground.

Oblique photograph by the writer, February, 1948.

Plate 6. Mouth of the S. Perpat, Western Johore Strait. Beaches being absorbed by mangrove. The former beach line shows clearly as a white fringe. This is an early stage. Later the mangrove will be bordered by an outer sand bar, and a small one can be seen just forming on the right of the photograph. Note the old beaches in the top right area. These, now well inland, were once surrounding a sheltered bay.

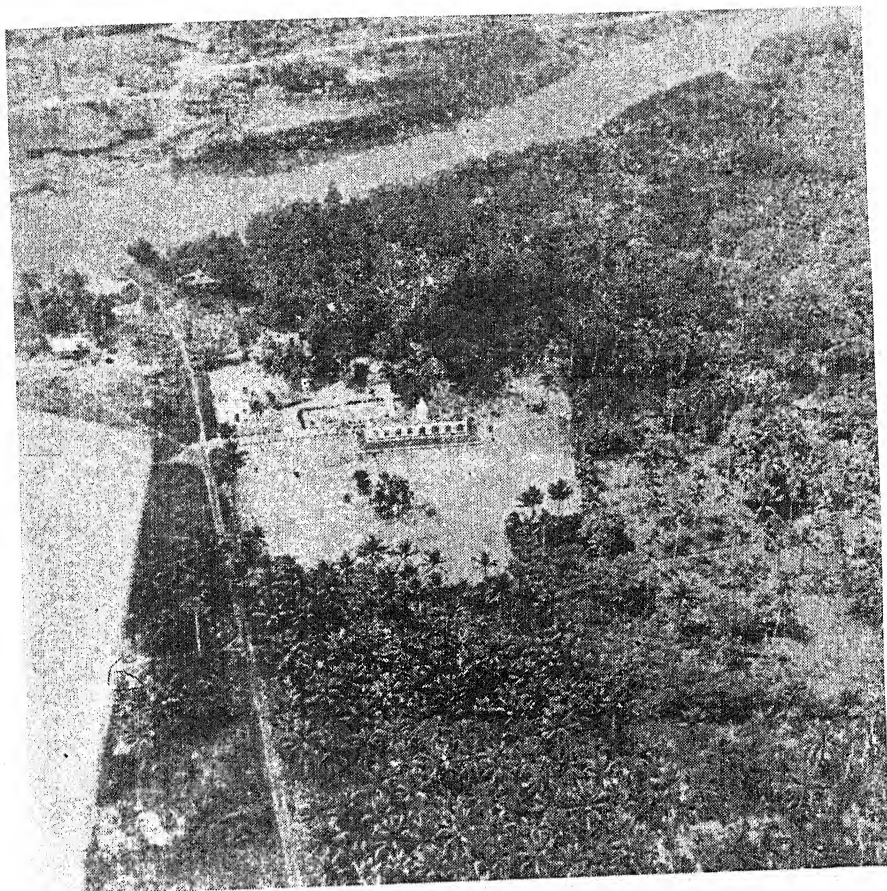
Vertical photograph by the RAF, May 1945.

Scale, 1:12,800.

Plate 7. Songkhla (Singora), Southern Siam. A clear example of several successive beaches. The dark toned areas mark silted lagoons whilst the lighter divisions are the former sand bars. Two rock outcrops,

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<sup>1</sup> Furthermore, air photographs form a useful adjunct to the study of the aborigines. In the case of a people who employ a distinctive form of house, such as the Ple-Temer of northern Malaya, whole culture groups can be mapped. This application, however, is outside the scope of this paper and will be dealt with separately.



Makam Sultan, Kota Tinggi, Johore.

(Oblique photograph by the author, February, 1948)

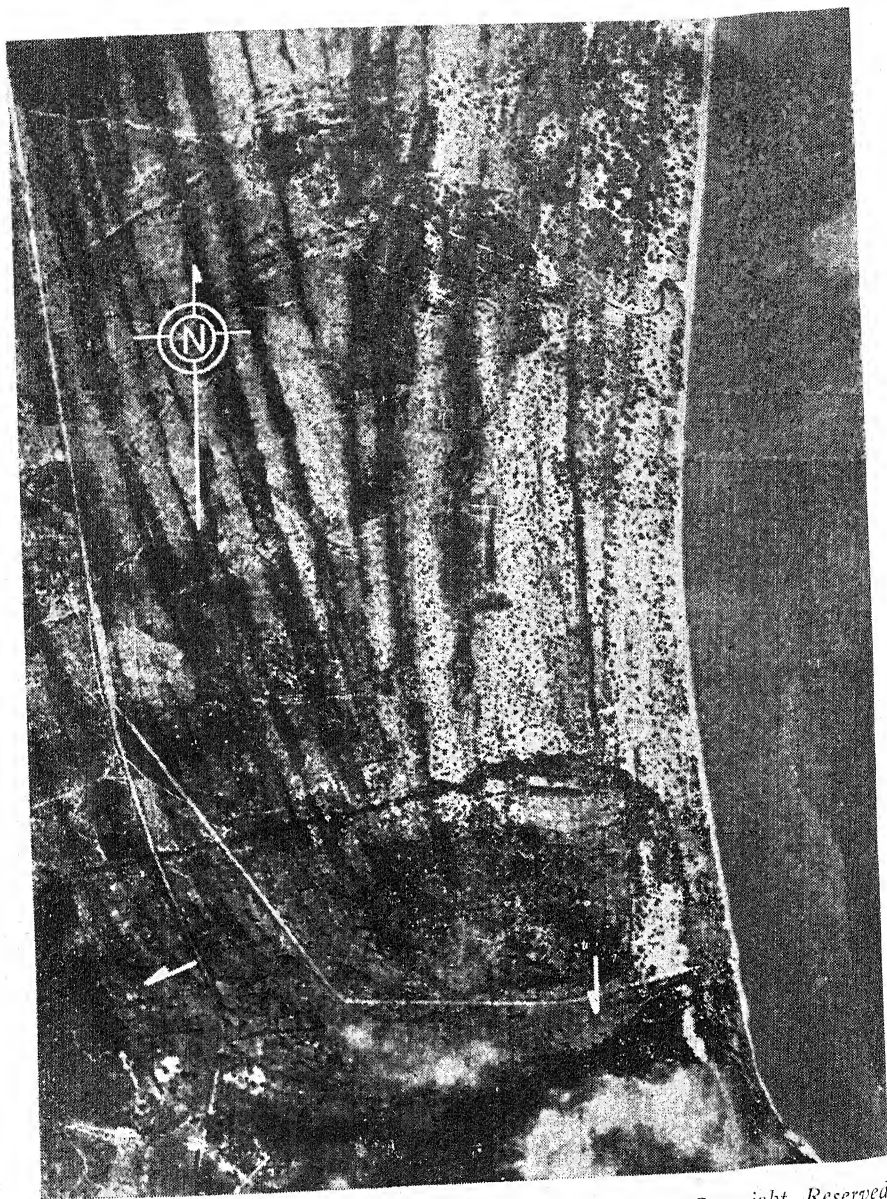


*Crown Copyright Reserved*

Mouth of the Sungei Perpat, Western Johore Strait.

(Vertical photograph by the RAF, May, 1945. Scale, 1:12,800.)

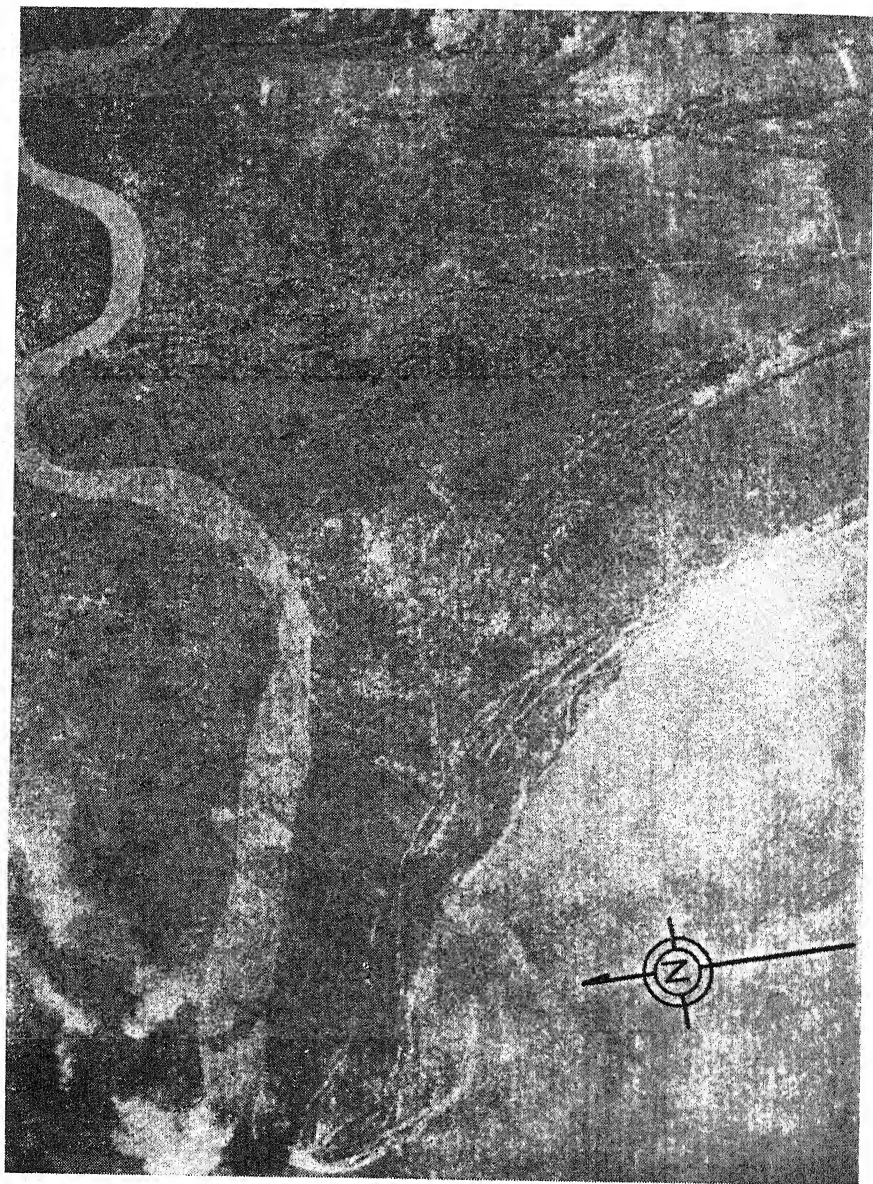




*Crown Copyright Reserved*

Songkhla (Singora), Southern Siam.

(Vertical photograph by the Fleet Air Arm, Feb., 1945. Scale, 1:16,000.)



*Crown Copyright Reserved*

The mouth of the Sungei Muda, Province Wellesley.

(Vertical photograph by the Fleet Air Arm, January, 1946. Scale, 1:33,300.)



formerly islands, have been absorbed into the mainland (arrows), and the light patch in the water with the waves breaking, shows the location of a new bar in process of formation.

Vertical photograph by the Fleet Air Arm, February, 1945.  
Scale, 1:16,000.

Plate 8. The mouth of the S. Muda, Province Wellesley. Here the successive beaches do not show quite so readily, since the richer soil in the silted lagoons is supporting a thick growth of trees. The attenuated mouth of the river and the new bars building up are very obvious.

Vertical photograph by the Fleet Air Arm, January, 1946.  
Scale, 1:33,300.

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*Bulletin de la Société des Etudes Indochinoises*, Tome XVII, No. 2, 1942.
- Siam.**
- WILLIAMS-HUNT, P. D. R., "An Introduction to the Study of Archaeology from the Air. Part I, Technique".  
To be published in the *Journal of the Siam Society* this year.
- WILLIAMS-HUNT, P. D. R., "Circular Earthworks in Eastern Siam; An Air Survey".  
To be published in *Antiquity* this year.

From time to time good examples of archaeological air photographs appear in the *Illustrated London News*, whilst many of the pre-war numbers of *Antiquity* and *Oxoniensia* contain excellent material mostly from British or European sites.

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**Corrigenda (Vol. 20, pt. 1)**

**Historical Sketch of Chinese Labour in Malaya.**

- Page 66, line 14. after "also" delete comma.  
Page 67, line 29. after "in-thrust," for "of" read "to."  
Page 71, line 16. after "Chiuchew" insert (= Teochew).  
Page 71, line 17. after "Macau" insert (= Cantonese).  
Page 71, line 26. for "received" read "receive".  
Page 71, line 28. for "arrived" read "arrive".  
Page 72, line 1. for "months" read "month".  
Page 78, line 18. for "present" read "prevent".  
Page 81, line 34. for "complain" read "complaint".  
Page 94, line 16. after "appointed" insert "to consider the health of Estate labour".  
Page 94, line 17. delete.  
Page 94, line 18. before "overlapping" insert "There was considerable".  
Page 94, lines 22 & 23. delete.  
Page 101, line 12. for "Association" read "Associations".  
Page 104, last line — set back into margin.  
Page 108, line 11. for "hooligans" read "hooligan".  
Page 110, line 34. for "uppatriotic" read "unpatriotic".  
Page 111, line 1. delete "for" at the beginning of the line.  
Page 111, line 5. after "to have the" insert "greatest".  
Page 111, line, 36. for "began" read "begun".

**Corrigenda (Vol. 20, pt. 2)**

**Two Brunei Charms.**

- p. 51, lines 6 to 3 from the bottom of the page should read,  
"O Israfael, sounder of the last Trumpet;  
O Izrail, Angel of Death;  
O Michael, guardian of the subsistence of mankind;  
O Gabriel, messenger of God;"

**The Sources of the Shellabear Text of the Malay Annals.**

- p. 106, 14th line from top: for "on" read "to".

**Notes on the Text of the Malay Annals.**

- p. 112, 12th line from the bottom: for "mean" read "meaning".  
p. 113, footnote 11, 6th line: for "Kalng" read "Klang".  
p. 114, 4th line from the top: for "posthumously" read "posthumously".

**The Kings of 14th Century Singapore.**

- p. 120, 5th line from bottom of page: for "1388" read "1338".  
p. 127, opposite No. 3: for "Perak" read "Perlak".

**Notes on the Cocos-Keeling Islands.**

- p. 144, 9th line from the bottom: for "*ialiaceus*" read "*liliaceus*", and for "*Subcordata*" read "*subcordata*".

p. 150, 18th line from the top: A Van der Jagt's report was apparently published in *Verh. Batav. Gen. v. Kunsten en Wetenschappen*, Vol. 13, p. 193 *et seq.* (Reyne, 1939, p. 318).

p. 151, 24th line from the top: for "Roes" read "Ross".

p. 152, 10th line from the top: Mr J. E. B. Jessamine, who was on the Cocos-Keeling Islands in 1944, tells me that he found the board commemorating the incorporation of the islands in the British Dominions. He intended re-erecting it near the landing place, but unfortunately could not then obtain sufficient cement to do so.

p. 153, 28th line from the top: for "Batamese" read "Bantamese".

p. 161, 11th line from the top: the *Ayesha* made for Padang, not Batavia as stated. After leaving the port she fell in with the Norddeutscher Lloyd freighter *Choising*, and the men from the *Emden* transferred to the latter boat, sinking the *Ayesha* in 4,000 fathoms of water. The *Choising* crossed the Indian Ocean to the Turkish port of Hodeida, on the Red Sea. This was at the time invested by the Allies, but after two attempts further up the coast the remains of the German party succeeded in getting through to Damascus, in Syria. Finally, on 10 June, 1915, they reached Vienna, where they received an enthusiastic welcome. The diary of a member of the landing party was published by Vice-Admiral Kirchhoff in 1916, in *Der-Seekrieg, 1914-1915*. An English translation by Dr T. F. A. Smith appeared in the *Journal of the Royal United Service Institution* in November the same year. A summary of it is given in *The Times Documentary History of the War*, Vol. 4, 1917, pp. 213-216. According to a despatch from Capt J. C. T. Glossop, Commanding H.M.A.S. *Sydney*, the *Emden* lost 7 officers and 108 men in the engagement. 20 officers and 191 men, of whom 3 officers and 53 men were wounded, were recovered from the Island of North Keeling the following day. The landing party which escaped in the *Ayesha* consisted of 3 officers and 42 men, but it is not clear how many of these died during the journey back to Germany.

p. 183, 11th line from the bottom: for "rats" read "rat".

p. 183, 10th line from the bottom: for "1871" read "1878" as given on page 155.

### The Chinese in Malaya

The Society, has received a review copy of,

"The Chinese in Malaya", by Victor Purcell, C.M.G., Ph.D., published by Geoffrey Cumberlege, Oxford University Press, London, on 26 February, 1948. 327 pages. English price, 18s.

A fuller notice will appear in the next miscellaneous number of the Society's Journal (Vol. 22, pt. 1).

1948] *Royal Asiatic Society*.

Vol. XXI.

Part 2.

**JOURNAL**  
of the  
**Malayan Branch**  
of the  
**Royal Asiatic Society**

(Covering the territories of the Federation of Malaya,  
the Colonies of Singapore, Sarawak and North Borneo,  
and the State of Brunei)

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**September, 1948**

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Two papers,

**Mohammedan Divorce by Khula  
Inheritance in Negri Sembilan**

by

**The Hon'ble Mr. Justice E. N. Taylor**

SINGAPORE  
Malaya Publishing House.  
1948



# The Malayan Branch of the Royal Asiatic Society

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## *Patron:*

His Excellency the Right Honourable Malcolm MacDonald, P.C.,  
Commissioner-General for the United Kingdom in South-East Asia.

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*Hon. Editor:* Mr. C. A. Gibson-Hill, *M.A.*



## Editorial Note

This Journal, which is devoted to two papers by the Honourable Mr. Justice E. N. Taylor, forms the second part for 1948. The first part, which was published in April, was a miscellaneous number, consisting of nine papers by different authors. The third third part for this year will be devoted to an index to Volumes 1—20 (1923-1947) of the Society's publications.

The bibliography to the papers in this Journal cites three items published by the Society. The stock of the first of these, *Rembau—Its History, Constitution and Customs*, by Parr & Mackray (*J.R.A.S., S.B.*, No. 56), is almost exhausted, but copies of other two, *The Customary Law of Rembau* (*J.M.B.R.A.S.*, Vol. 7, pt. 1) and *Malay Family Law* (*J.M.B.R.A.S.*, Vol. 15, pt. 1), both by Mr. E. N. Taylor, can be obtained on application to the Honorary Secretary of the Society.

The first part of next year's volume (Vol. 22, pt. 1) will again be a miscellaneous number. The papers in it will include *Notes on Ancient Times in Malaya, Part 3*, by Dato Sir Roland Braddell, *A Panji Tale from Kelantan*, by Sir Richard Winstedt, *A Short History of Trengganu*, by M. C. ff. Sheppard, *The Siamese Wars with Malacca during the reign of Sultan Muzaffar Shah*, by G. E. Marrison, and *The Early History of Christmas Island (Indian Ocean)*, by C. A. Gibson-Hill.

Members are reminded that the annual subscription, which becomes due for payment on the first of January in each year (Rule 5), has been increased to \$10.00, with effect from January 1st, 1949.

## Notice to Contributors

In the interests of economy contributors are asked to keep their papers as brief as possible, to avoid the use of foot-notes, and to correct and return their proofs with the minimum delay. Contributions should be type-written, on one side of the paper, double-spaced and with good margins. Line drawings should be in Indian ink, on white paper or Bristol board, and large enough and bold enough to allow of reduction.

Contributors are supplied with twenty-five reprints of their papers, free, shortly after the publication of the Journal (Rule 20). Additional copies can be provided on payment, if these are asked for when the paper is submitted, or when the galley proofs are returned to the Honorary Editor.

# MOHAMMEDAN DIVORCE BY KHULA

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## INHERITANCE IN NEGRI SEMBILAN

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Two papers by

**E. N. TAYLOR**

(formerly of the Malayan Civil Service)

a Judge of the Supreme Court of the

Malayan Federation.

### **Mode of Citation.**

These papers and cases may be cited thus:—

“Divorce and Inheritance (Taylor) p....”

*(Received, 22 February, 1948)*

## Introduction

The Ordinance      Mohammedan Law was recognised in the Straits Settlements from their earliest charters but difficulties were encountered in its application. In 1880 a Muhammadan Laws Ordinance was passed and this, with certain amendments, is still in force as Chapter 57 of the Revised Edition of 1936.

This statute deals mainly with procedure. It applies the Mohammedan law generally to local Mohammedans, regulates married women's property and provides for the registration of marriage and divorce. The Courts are enabled to ascertain the substantive law from specified text-books of authority—one of them being the *Minhaj et Talibin*, which is of special local interest as the English translation is by E. C. C. Howard, a former Official Assignee of Singapore.

The Governor appoints Kathis for the various sections of the Mohammedan community. Their duties include enquiring into questions of marriage, divorce and alimony and effecting the consequent registration. For these purposes they have quasi-judicial powers subject, in certain matters, to appeal to a Registrar of Mohammedan Marriages who is usually the Commissioner of Lands. The proceedings of Kathis and Registrars are subject to revision by the Governor.

These revisionary powers are not frequently exercised but they are important. No special procedure being laid down, they need not involve more than the minimum of formality and expense. The party complaining submits a petition, often in the form of a letter. The Registrar of Marriages supplies a copy of the record with his reasons for the decision and the Governor makes a final order in the matter on the advice of the Attorney General and such other officers as he may consult. This conforms very closely to the principles of the Mohammedan law which regards the Kathi as a judge of fact and prefers that questions of law should be settled by Jurisconsults who do not see the parties and are the less likely to be swayed by sympathies. The system has, however, the defect that previous decisions are not published and are not easy to find.

There is, in particular, one question of considerable importance which, though often discussed, does not appear to have been decided before 1939 and on which apparently conflicting opinions are to be found in the text-books. Put very shortly it is this:— Can the wife insist on divorce, in any circumstances?

General  
principles

The instrument of law is language and it is very difficult to write clearly in English on foreign systems of law. If technical

terms such as *mahr* are not translated the work is unintelligible to those who are not familiar with the foreign language. If they are translated, they may mislead because there is no precise equivalent and the nearest available word often has a different connotation. Great caution is therefore necessary and such terms as "judicial divorce" must be read with due regard to the fact that in relation to another system of jurisprudence they can only be approximately correct.

The general principles of divorce are outlined in Wilkinson's invaluable Introductory Sketch but, as he says, "they are difficult of interpretation in occasional instances." This is partly because the Moslem law itself is composite and though some of its principles are similar to those of European systems others are founded on a totally different conception of marriage.

The European idea of divorce is derived from the Christian doctrine that marriage is, or ought to be, indissoluble. Consequently divorce is an exceptional remedy which can only be granted by the decree of some high authority.

The pagan Arabs never had that notion. They had moved but little from early Sumerian times when women were regarded as property. The husband could divorce his wife at will but the wife had no remedy whatever.

The Prophet made a substantial advance in the direction of equality of the sexes. He preached in this sense, describing divorce as the most detestable of all permitted things and exhorting his followers to live with their wives peaceably but if that were impossible, to separate from them with kindness.

It was not, however, possible for the law to be brought into line with his religious teaching in the space of one or two generations. The Moslem law was therefore based on the existing customary law but modifications were introduced, curbing the men and giving some rights to women. In the result there are several different ways of dissolving a marriage, some of which are based on the pre-Mohammedan conception of divorce at the will of the husband and others on the notion of divorce by decree.

Registration, of course, was not introduced until centuries later and is not uniformly applied in the different countries affected.

The prevailing form is the one derived from ancient custom. *Talak* The husband can divorce his wife at any time merely by pronouncing *talak* in the presence of witnesses. If he gives only one *talak* the divorce is provisional or revocable—he can return to her within a limited time; this is called *rojok*. If, however, he gives three

*talak* there is no right of return and the divorce is irrevocable. The three *talak* may be given all at one time or on successive occasions. The giving of two *talak* is not a form in practical use.

In Malaya, every such divorce must be registered promptly but the function of the Kathi in these cases is ministerial rather than judicial. He does not grant the divorce. He ascertains that the divorce has been duly pronounced and issues the appropriate certificates.

The wife has no corresponding way of divorcing the husband or of returning to him without his consent. In general she must by some means persuade or provoke him to divorce her but there are certain exceptions to this.

#### Nikah taalik

One of them arises from the form of marriage called *nikah taalik* in which a power to divorce herself is expressly reserved to the wife at the time of the marriage, in case of the prolonged absence of the husband. She is not bound to exercise the right and if she wishes to do so she must first satisfy the Kathi that the right exists and that there are grounds for its exercise.

This is neither a wholly voluntary nor a strictly judicial divorce but an intermediate form.

#### Nusus

The husband has another remedy in case the wife is recalcitrant. He can apply to the Kathi to order her to return to him; this is called *nusus*. It is comparable to "restitution of conjugal rights" (a curiously persistent error for "rites") and is in the nature of a judicial decree. The wife has no corresponding express remedy but if she complains that her husband neglects her the Kathi will summon him for an enquiry and endeavour to bring about a settlement of the dispute. Failing reconciliation he may advise the husband to pronounce a *talak* divorce but this is plainly not a judicial remedy.

#### Pasah

Most of the Malayan Moslems are Shafeites and it is well settled that in the Shafei law the wife can obtain from the Kathi a full divorce for desertion and that continued failure to provide maintenance amounts to desertion. This is called *pasah* and is a judicial divorce, corresponding closely to the European conception of divorce by decree.

#### Tebus talak

There is another form of divorce at the instance of the wife which is called *tebus talak* and is well known in Malaya though not of frequent occurrence. *Tebus* is a Malay word meaning "redeem"; the wife recovers her freedom by making some payment to the husband. The amount is usually, but not necessarily, the equivalent of the *mas kawin*.

Ancient custom required a bridegroom to make a payment to the bride's parents, called in Malay *mas kawin* meaning "marriage gold". Mohammedan practice requires a bridegroom to make a payment to the bride herself; this is called *mahr*, in Arabic, and may be paid outright, or deferred, or partly paid and partly deferred. Among Malays the two systems have merged; the payment is still called *mas kawin* but it is payable to the bride herself. It is seldom split but the whole amount is often left outstanding as an ante-nuptial debt due from the husband to the wife; if he divorces her the debt becomes immediately payable. If the divorce is at her instance she may release the debt as the consideration for *tebus talak*.

Mas kawin  
and mahr

It is unfortunate that both *mahr* and *mas kawin* are frequently translated by the word "dowry" which properly means a gift or settlement by the bride's parents and therefore suggests a fundamentally different idea.

Under any system of law either spouse may have separate property and there may be transactions between them during the marriage which must be unravelled on divorce especially in cases of *tebus talak* where the divorce itself involves a payment by the wife which may have to be set off against money due from the husband in respect of *mas kawin* or alimony or of some dealing with her separate estate.

Moreover the question of the amount to be paid may not be the only question to be decided. Points of the religious law may also be in dispute.

All Moslem divorce cases, whether at the instance of the husband or of the wife, go in the first place to the Kathi. He is primarily an ecclesiastic and approaches the problem, not from the legal standpoint but from the religious doctrine that divorce is detestable and he accordingly sets to work to save the marriage if he can. If, despite his efforts, the parties cannot be reconciled and divorce becomes inevitable he still perseveres in the hope that they may separate without ill-feeling. Where the dispute is, in part, a financial one this necessarily involves him in questions of joint and separate property but his patience and skill not infrequently bring about a general settlement, thus avoiding the expense and trouble of separate proceedings in the civil court.

Kathi's  
proceedings

The author vividly remembers one case of *tebus talak* in which the financial affairs of the parties were very complicated but after arduous negotiations the two families, with the aid and approval of the Kathi, arrived at a compromise. In consideration of a sum in cash and certain adjustments, the husband was to divorce the wife but at the last moment he would pronounce only a single *talak* whereas she required an irrevocable divorce.



The young man was obviously reluctant but in the end he did pronounce the triple *talak*, though only under pressure from all sides including his own supporters. The writer therefore asked the Kathi if he were fully satisfied in his mind, *puas*. The Kathi replied "*puas*" and forthwith registered the divorce, from which it appeared that the consent need not be a wholly voluntary or willing consent. (*Siah v Sitam*, Customary Law of Rembau, p. 109).

In the event, however, of the Kathi's award being seriously challenged it becomes important to know what the recognised grounds of divorce are.

#### Rare causes

The text-books on Mohammedan law contain references to physical cruelty and impotence which may be grounds for *pasah* and to several other causes of divorce which may be available to a wife but only in rare and special circumstances which do not occur in Malaya; these are *ila* or vow of abstinence, *laan* or accusation of adultery, *zihar* or irreligious insult and apostasy from Islam. The only other forms are called *mubarat* and *khula* and these are of more general application.

#### Mubarat

*Mubarat* is an Arabic term for divorce by the husband at the request of the wife without any payment or other condition. It is, in effect, divorce by mutual consent and as a matter of procedure is completed by pronouncing and registering *talak* in the ordinary way.

#### Khula

*Khula* is divorce by redemption and is similar in principle to *tebus talak*. The problem therefore resolves itself into a more detailed examination of *khula*. Some writers say that it is a divorce by consent, the only difference between *mubarat* and *khula* being the payment by the wife. Others refer to procuring the husband's consent by pressure and there are passages which suggest that his compliance might be enforced by some kind of process. Others go further and describe *khula* as a right of the wife, corresponding to the husband's right of pronouncing *talak*. Taking them all together one would conclude that *khula* covers two classes of case. If the husband accepts the Kathi's award, even reluctantly, and pronounces the divorce then clearly the matter is at an end; this is the typical case. If, however, he refuses to do so, difficult questions arise and on these the text books are very obscure. The principal points to be determined are:—

- (a) Can the husband's consent be dispensed with?
- (b) If so, in what circumstances and on what grounds? and
- (c) What is the procedure? By what means can the award be enforced?



Also it is of special interest in Malaya to know in what respects, if any, *tebus talak* differs from *khula*.

Two cases of *khula* divorce were decided by the Governor shortly before the Japanese war and these throw some light on the matter. Though broadly similar they differed in several material respects and must therefore be considered separately.

In the first, after a long and bitter contest between the parties, a Penang Kathi awarded a *khula* divorce. He directed the wife to repay the *mas kawin*; she agreed to do so and deposited the money but the husband refused to accept it or to pronounce a divorce. Eventually the Kathi came to the conclusion that *khula* is equivalent to *pasah*, or dissolution of marriage by decree, and he accordingly registered a divorce.

The husband appealed and the divorce was set aside, so clearly *khula* is not *pasah*. This negative result left the parties where they were without indicating any solution to the problem.

Soon afterwards the Chief Kathi of Singapore awarded a *khula* divorce in similar circumstances. The wife agreed to the terms but the husband refused to accept them. After further discussion the Chief Kathi formally called upon the husband to register the divorce. The husband replied that he could not register a divorce which he had not pronounced and still refused to pronounce. Again deadlock resulted.

Eventually the husband applied for revision on the ground that it is contrary to Mohammedan law to order a husband to divorce his wife. This raised the question in a broad and general form and after fuller consideration a more positive answer was given.

Both cases raised subsidiary issues of law and procedure which are of some general interest so the facts and arguments are now reported in full. The main question has certainly been discussed but it does not appear that it has ever before been analysed. Similar cases are not unlikely to arise in the future and it is submitted that the Governors of the Settlements would, in practice, follow these decisions which may also be of interest and value to other authorities before whom such problems may come.

## Rokiah v Abu Bakar

Penang Mohammedan Marriage Appeal No. 3 of 1937  
C. S. O. 1223/39

*Khula* is not *pasah*

It is illegal to register a *khula* divorce without the assent of the husband.

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Both parties were Shafeites and both possessed substantial means. In 1936 the wife applied to the Kathi for dissolution of the marriage, *pasah*, on the ground of neglect; the Kathi ordered the husband to pay \$20 a month for maintenance; the husband complied with this order for several months but later the wife refused to accept the money; continued and protracted negotiations failed to achieve a settlement. In 1937 the wife renewed her application for *pasah* which was again refused; she appealed to the Registrar who directed another Kathi to investigate the case; the second Kathi's findings were:—

Great harm has been done to the wife who has been left by her husband for more than three years. She hates him strongly and likewise he has no love for her—the present case is one where a divorce by way of *khula* is applicable.

He quoted the following passages from *kitab*\*

“Mohammedan law gives the right to divorce by way of *talak* to the husband when he hates his wife and the right to divorce by way of *khula* to the wife when she hates her husband”

[*Bidayatul Almutahed*, No. 59]

“*Khula*, says Imam Shafei, is a *pasah*”

[*Ibid*, p. 60]

“It is agreed by all the four schools that when a wife hates her husband on account of his bad manners or loathsome appearance the law allows a divorce by way of *khula*”

[*Mizan Shaarani*, p. 125]

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\* Literally, “books”. These are not specified in the Ordinance and their degree of authority is not known.

The wife was willing to refund the *mas kawin*, which was 201 14 May 1938  
guilders, and deposited that sum with the Kathi.

On these grounds the Kathi "Ordered the husband to take the compensation for divorce in order to put a stop to this prolonged misunderstanding".

The husband filed a notice of appeal to the Registrar.

The Registrar extended for three months the time for registering the divorce and informed the Kathi that he could use his discretion as to registration.

The wife applied to the Registrar for an order directing the Kathi to register the divorce but this was refused.

The Kathi registered the divorce and thereupon the Registrar 10 Aug. 1938  
gave the husband leave to file further grounds of appeal.

The appeal was heard by the Registrar with the aid of 24 Oct. 1938  
two Mufti.\*

The husband gave evidence, in the course of which he stated that at one or other of the hearings at first instance he had implored the Kathi to ask the wife to resume the married life but the Kathi had only asked whether she was prepared to compensate him to obtain a divorce.

The husband submitted written arguments in support of his appeal including the following:—

- (a) The Kathi's order was not an order of divorce but merely contemplated that the husband would pronounce *talak* which he had throughout refused, and still refused, to do;
- (b) A *khula* divorce can only be effective with the consent of the husband [II Ameer Ali, p.p 506 *seq* 5th Edition]
- (c) The registration of the divorce was improper and ought to be expunged.

He also submitted a written opinion on his case by the Mufti of a Malay State but this was excluded on the ground that it was *post litem motam*

The wife was allowed to call, as an expert witness on the Mohammedan law, an Indian gentleman who has published an English translation of the Koran. He said that in his opinion

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\* See page 33.

the consent of the husband was not necessary in some cases of *khula* and produced translations from various *kitab* but he could not adduce anything definite in support of this view.

30 Nov. 1938

The Registrar and Mufti ordered that the divorce "ordered" by the Kathi on 14 May and registered on 10 Aug. 1938 be cancelled and that the 201 guilders never accepted by the husband be returned to the wife by the Kathi.

The wife's solicitors applied for a copy of the record of the proceedings before the Registrar, which was supplied, and for his grounds of decision without which, they said, it was impossible to frame grounds of appeal to the Governor. The Registrar declined to supply grounds of decision [As to this, see Note on Procedure, page 34].

They then lodged a petition to the Governor to revise the decision of the Registrar and to reverse it on the following grounds:—

- (a) *Pasah* includes all forms of divorce on the application of the wife except *mubarat*;
- (b) The Kathi was right in holding that *khula* is *pasah* on the authority of the *kitab* cited (p. 10);
- (c) If the husband unreasonably withholds his consent to *khula* the Kathi can compel him to consent or consent on his behalf;
- (d) "The right to ransom herself belongs to the wife as compared with the right of divorce which is in the hands of the husband. Therefore when the law puts the right of divorce *talak* in the hands of the husband when he hates his wife, it puts the right of *khula* in the hands of the wife when she hates her husband".

At the request of the Colonial Secretary the Registrar delivered a written judgment. It was in two parts—one dealing with questions of procedure, the main points of which are noticed at page 34, and the other on the merits which was as follows:—

16 Feb. 1939 J. A. HARVEY, M.C.S., Registrar of Mohammedan Marriages,  
Penang

There is nothing in the recognised *Kitab*, or in the Holy Koran, which dispenses with the consent of the husband in a *khula* divorce. The story of Sabith cannot be accepted as supporting the contention that *khula* is *pasah*. The Holy Prophet did not 'order' Sabith to divorce his wife. The word used was

the Arabic word *kabul* which means 'accept'. Sabith apparently agreed to do so and did divorce her. He was morally, not legally, bound to divorce her.

The Hon. Mr. C. G. HOWELL, K.C., *Attorney-General*:—The law is, in my opinion, correctly stated, *viz.* that a divorce by *khula* must be by consent of the parties and I can see no other reason for interfering with the finding.

His Excellency the Governor, Sir Shenton Thomas, declined to interfere with the decision of the Registrar.

### Commentary

The effect of the final decision was that the marriage subsisted in law and the wife had no further legal remedy. In short, the deadlock was restored and confirmed.

The record naturally did not show what the ultimate result was but only three things are possible. The parties may somehow have been reconciled or the husband may have been persuaded to pronounce a divorce. Failing those the deadlock must have continued indefinitely.

The surviving papers do not show whether the husband had another wife but it is almost certain that he had.

In considering whether undue hardship was caused to the wife, however, it is necessary to bear in mind three points. First—both spouses belong to a community in which polygamy is recognised and there was, at the time of this marriage, no stipulation against it; the maintenance awarded was in fact paid and in any event the wife had means. Secondly—the failure of the Kathi to bring about a divorce was not due to any defect in the law but to his adopting a wrong method of enforcement, as the next case shows. Thirdly—the delay must be judged in the light of the Mohammedan law which expressly enjoins delay as a means of bringing about agreement. This last consideration does not apply in the same way to the legal proceedings before the Registrar and Governor but despite unusual difficulties these were completed in about seven months; they could hardly have taken less than four months.

**Syed Ahmad     v     Fatimah**  
(C.S.O. (S.S.) 7492-39. O.A. 177-41)

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A Kathi has a discretionary power to direct a husband to divorce his wife on such terms (*e.g.* as to repayment of *mahr* or *mas kawin*) as he may approve and the husband is bound, as a Moslem, to obey such a direction. This is *khula*, called in Malay *tebus talak*, and is founded on the traditional case of Sabith, decided by the Holy Prophet himself.

A stipulation at the time of the marriage that the husband will not marry an additional wife is valid and breach of such an undertaking is a good ground for such a divorce.

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The facts are fully stated in the opinion which follows.

24 June 1941.  
Introductory.

E. N. TAYLOR (*as a jurisconsult*). This is a petition to the Governor by a husband under section 25 of the Mohammedans Ordinance (Cap. 57) for revision of a direction by the Chief Kathi of Singapore dated the 21st September, 1939.

I call it a "direction" because one of the issues raised is whether the Kathi had any power or jurisdiction to make a definitive order in this case and therefore it is a question whether the direction complained of was in truth an Order or whether it was merely pastoral advice which the husband was not legally bound to follow.

The dispute is very complicated and the documents, which would in any event have been lengthy, have been swollen by the inclusion of a number of matters which appear to me to be irrelevant. A full discussion of all the points raised would unduly extend this opinion. Where, therefore, I omit to comment on any point it may be taken that I have considered the point and think it not material. I shall be pleased to give my reasons if desired.

The so-called "case" for the appellant is really a long statement by his solicitors of his attitude, right or wrong, with very little sense of analysis or even arrangement and much repetition; it is in truth not a "case" but rather a statement of materials from which a case could (and in my view should) have been prepared. The case for the respondent is better but both sides use confusing



terms; in particular, they both confuse *talak* and *taalik* which may possibly be related etymologically but are in fact distinct things.

By far the most valuable introduction to the general problem is Wilkinson's "Law—Introductory Sketch" in the Papers on Malay Subjects. (F.M.S. Government Press). Some further information on Mohammedan divorce is contained in "The Customary Law of Rembau", pp. 18 *et seq.* Prolegomena.

"The principal facts are not in dispute and are as follows:— Facts.

The husband is a member of a rich Arab family but is now impoverished; the wife is a rich Bugis; both are domiciled in Malaya. Both were under 21 years of age at the date of the marriage which was in 1924. The proper consents were given by their respective guardians and also, as the wife was a Ward of Court, a Judge approved the marriage which was subject to four conditions referred to in the Order.

These conditions were:—

- (1) The husband to live in the wife's house;
- (2) The wife and her relatives to be free to exchange visits;
- (3) The husband not to request or induce the wife to leave Singapore;
- (4) The husband not to marry a second wife during this wife's life and if he does he shall, on her request, divorce her with the triple *talak* (*i.e.* irrevocably).

The conditions were incorporated in the Kathi's register and in the certificate of the marriage and were signed by the husband, then 20 years old. The "dowry" was stated in the register to be \$5.- and not to have been paid; the husband's gift to the wife was a brilliant ring valued at \$1,000; the marriage expenses were \$1,500, "received beforehand" (meaning, I think, received by the wife's family from the husband's).

The husband married an additional wife in 1928 and divorced her in 1929. The first wife upbraided him but did not make trouble. In 1930 the husband married one Moznah; this marriage still subsists and is the main cause of the present dispute. Moznah lives with the husband's mother.

In 1934 judgment was given against the husband for \$150,000. since when he has been financially embarrassed.

Some time later the wife requested the husband to divorce Moznah but he refused to do so; quarrels ensued and in April 1939



Facts (*contd.*) the husband absented himself from the first wife's house for more than a month. Early in May 1939 the wife complained of this neglect to the Kathi who endeavoured to arrange a settlement but unsuccessfully; on 24th May the wife lodged with the Kathi a further and formal complaint on the grounds:—

- (1) That the husband had left her;
- (2) That the quarrel was because of the additional wife;
- (3) That she had requested him to divorce her but he had refused.

She demanded \$150. a month for maintenance;

[*Note:* I cannot find it expressly recorded that she referred to the conditions but I think we can assume that the Kathi would have the register of the marriage before him as a matter of course.]

The Kathi called the husband for a formal enquiry on 29th May; both parties appeared and their evidence was recorded. The husband refused to divorce Moznah, who had given him no cause to complain. He offered to live with the first wife on good terms (*i.e.* to treat her equally with Moznah). He refused \$150. a month but offered maintenance "according to his means".

The wife complained that although the husband had promised to divorce Moznah he still refused to divorce either of them. [As I read it, she was referring not to the condition but to a subsequent oral promise based on the condition, *sed quaere.*] She said she would obey the Mohammedan law (*i.e.* submit to share her husband equally with Moznah) provided he gave her \$150. a month as maintenance. The Kathi gave them nine days to consider.

On 5th June the husband wrote to the Kathi making a cross-petition for a declaration that the wife was disobedient (*i.e.* recalcitrant within the scope of section 20 of the Ordinance). He defended his refusal to divorce the first wife on the ground that divorce is contrary to Mohammedan precepts except for grave cause. He protested against the Kathi's appointment of mediators as being unnecessary. On 7th June the parties again attended and the matter was adjourned for a further attempt at settlement. On 13th June the husband wrote to the Kathi contending that the wife was recalcitrant and asking that her application be dismissed.

The husband's brother and the wife's brother, the mediators appointed by the Kathi, negotiated unsuccessfully. On 14th June the wife's solicitors wrote to the husband's solicitors expressly setting

up the conditions of the marriage and calling upon him to give the triple divorce accordingly. On 21st June the husband's solicitors replied:— Facts (contd.)

- (1) That the wife had consented to his marriage with Moznah;
- (2) That she had condoned it;
- (3) That the condition against an additional wife was void in Mohammedan law;
- (4) That the husband's supposed consent to the conditions was void for his minority.

On 18th September the Kathi called the parties for 21st September; the husband and the wife's brother attended. The husband refused to divorce the wife. The wife's representative offered to return the brilliant ring and the "dowry" of \$22.50\*. The husband refused to divorce the wife in consideration of such return unless the Kathi ordered him to do so and also unless such order was in accordance with the Mohammedan law. The wife also offered to refund the \$1,500. paid for marriage expenses but whether on the same or some other occasion does not appear.

The Kathi then stated his conclusion. According to the official translation the material words are:—

"It is ordered that the divorce be granted under *talak khula*, that is, the wife is to return the brilliant ring and the *mahr* of \$22.50 in accordance with the practice of the Holy Prophet" (referring to the traditional case of Sabith).

This is the direction which the husband now asks the Governor to revise.

On the following day the Kathi wrote to the husband conveying the direction (called in the translation a "judgment or decision") and enclosing an extract from Ibn Abbas giving that writer's version of the Prophet's "judgment or decision" in Sabith's case.

[This letter shews beyond possibility of doubt that the Kathi was calling on the husband to carry out his promise to submit to the direction and divorce the first wife if the direction was in accordance with Mohammedan law. The extract was enclosed to show that the direction was in accordance with a decision by the Prophet himself in a very similar case.]

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\* In the Register the sum was stated as \$5. and not paid. Presumably \$22.50 was paid at some other time but the record was silent. See also pages 7, and 47 (footnote).

**Facts (contd.)**

On 25th September the husband wrote to the Kathi protesting that it is against the Mohammedan law to order a husband to divorce his wife. He contended that the expressions used by the Prophet in Sabith's case, which is the foundation of *khula*, amounted only to advice, not to an order, and that *khula* is therefore divorce by arrangement on terms approved by the Kathi, and not a kind of divorce which can be made by a compulsory decree. He complained that his application for a declaration that the wife was recalcitrant had been neglected. On 27th September the husband's solicitors wrote to the wife's solicitors to the same effect and on 29th they wrote again giving notice of his intention to appeal to the Registrar. On 27th September the husband's solicitors gave notice to the Registrar who replied that the decision was not appealable to him. On 9th October the wife's solicitors formally tendered the return of the ring and \$22.50; on 14th October the husband's solicitors replied refusing the tendered return; on 17th November the husband's solicitors gave notice to the wife's solicitors of their intention to apply to the Governor for revision. On 30th November the Kathi wrote to the husband requesting him to register the divorce on 2nd December; on 1st December the husband replied that he could not register the divorce because he had not given any divorce and adding that he was preparing an application to the Governor for revision.

On 11th December the husband was served with a Police Court summons, issued at the instance of the Kathi, charging him with the offence of failing to attend the Kathi on 2nd December.

On 11th December the husband's solicitors wrote to the Colonial Secretary formally applying for revision by the Governor; after further correspondence regarding procedure the parties filed their cases.

**Husband's case.**

The husband's case is as follows.

(1) That the four conditions of the marriage were invalid by Mohammedan law.

This is plainly incorrect. The general rule is that Mohammedans can make their marriage subject to conditions. Sir Ronald Wilson (6th Edition at p. 135) specifies certain conditions which are invalid but none of the four attached to this marriage is included. On the contrary, the one in question, the condition against polygamy, was expressly held to be valid in 1838 in Beebee Hurron's case (*op cit.* bottom of p. 134). It does not follow, however, that the remedy for breach of the condition is compulsory divorce.

(II) That the conditions are immaterial because the direction complained of was not based on them.

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It is true that the direction is not expressly based on them but this is a petition for revision, not an appeal. It is open to the Governor to consider whether an order based on the conditions should be made. The conditions are therefore not irrelevant. Husband's case (contd.)

(III) That the Kathi ignored the husband's complaint of recalcitrance.

I do not think there is any substance in this. It is true that the direction does not in express terms dismiss that application but there never was any substantive application. It was put forward by way of a counterclaim or cross-petition as part of the husband's defence to the proceeding instituted by the wife. The Kathi heard both parties on several occasions. His judgment was plainly in favour of the wife and the husband's cross-petition was, by necessary implication, dismissed.

(IV) That the Kathi had no jurisdiction to appoint "arbitrators", i.e. mediators.

It is a well established practice in serious cases and not necessarily limited to cases of personal violence or particular kinds of insult. This case was, and is, serious and it was a proper exercise of the Kathi's discretion to attempt mediation in the manner authorised by the Koran.

(V) That when the Kathi summoned the husband on 21st Sept., the husband's brother (the mediator on his side) was absent in Kuala Lumpur and the wife was ill.

I take this to be an alternative contention in case (IV) fails. It is alleged, but there is no evidence of it, that the Kathi knew that the brother was in Kuala Lumpur and this is to show that the Kathi was biased or oppressive.

It was proper for the Kathi to attempt mediation but the very voluminous negotiations which had been going on for more than three months had clearly failed and it became the duty of the Kathi to proceed to judgment. The wife had attended in person on several occasions and given her evidence. It is not even alleged that on the 21st September the husband asked for a short, or any, adjournment to enable his brother to return.

(VI) That the Kathi had no jurisdiction to decree any divorce at all.

This does not mean that the Kathi has no jurisdiction to decree any divorce. It means that on the facts, he had no power

Husband's  
case (*contd.*)

to decree a judicial divorce in this case. Properly construed, this is not a "ground" for revision. It rolls up the whole case and wrongly labels the bundle as a separate technical ground. I will deal with the real question in its proper place.

(VII) That the Kathi's letter of 30th November is inconsistent with that part of the record which is extracted at p. 18 of the husband's case.

There is no substance in this. The matter was fully conveyed to the husband by the letter of 22nd September.

(VIII) That no Kathi has jurisdiction to decree *talak khula*.

This merely repeats ground (VI) in slightly closer terms.

(IX) That the Kathi is in the habit granting *khula* divorces in similar cases.

If correct, this would show that the direction is at least in accordance with local Mohammedan practice.

(X) That if so, those divorces are invalid.

(XI) That the Kathi knew that the husband was seeking to appeal against the direction and therefore he acted improperly in applying for the Police Court summons and seeking to proceed with it, which is evidence of bias.

The husband may not have known it but the Registrar had instructed the Kathi to apply for the summons. In any case the Kathi's anxiety to go on with the case in open Court before the Magistrate was evidence of his good faith.

(XII) A. The husband does not wish to compel his wife to return to him unwillingly, but

B. He wants to uphold the Mohammedan law in the interests of Moslems generally.

As to A—in that case, since she is plainly unwilling, why does he not grant the *talak* as requested by her and advised by the Kathi?

B is not a proper ground for revision; he should seek amendment of the Ordinance.

Taken together, these seem to mean that he wants to deny the wife her freedom without wishing to resume cohabitation and thus sacrifice her in furtherance of his views on religious law and practice. This is unreasonable.

(XIII) The husband has filed six very voluminous *fatwa* in support of his contention that on the facts a judicial divorce cannot be decreed. Husband's case (contd.)

In my opinion the *fatwa* are in themselves inadmissible\* but I do not think it necessary to give the reasons for this view because their point is established from another source.

The husband prays:—

- (a) That the direction of 21st September be set aside;
- (b) That his application for a decree of recalcitrance be adjudicated;
- (c) For other or further relief.

The wife's case is as follows:—

Wife's case.  
29 April 1941.

(I) That if there was proper ground for divorce, but the Kathi decreed the wrong kind, the Governor should substitute an appropriate decree of divorce.

This is a proper submission. The proceeding is not appeal but revision.

(II) General comment on the husband's case.

(III) The husband does not support his case by any reference to the well known text writers.

Comment on the *fatwa*.

(IV) The parties are domiciled in the Colony and therefore their personal law is the Mohammedan law subject to possible local variations.

I think this is correct but I do not think any local variation is material.

(V) The wife cannot be affected by those portions of the petition which set out the correspondence between the husband and the Kathi or between his solicitors and the Registrar.

(VI) That on the facts "the Kathi had power to order a divorce and that a divorce was the only proper remedy".

This is compendious but the points are discussed separately below.

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\* See pages 33, 38.

Wife's  
case (contd.)

(VII) The four conditions of the marriage were approved by the husband's father who was the leader of the local Arab Moslems. The husband himself knew and approved them and he was then of age according to the Mohammedan law. The English law of minority applied to the wife in respect of her settled estate but not to either party in respect of capacity to marry.

(VIII) The four conditions are usual and valid.

They are not usual in this country but similar conditions occur in the books and in Indian cases and they are valid. The case also refers to Wilkinson at p. 56 but the condition there mentioned is a different one.

(IX) The fourth condition, being valid, is enforceable and the wife "is entitled to a divorce from her husband".

True, but how is it to be enforced?

(X) The husband ignored the conditions when stating his case for the *fatwa*.

This also is true but as the *fatwa* have no weight it is not important.

(XI) Inability or neglect to maintain a wife enables her to apply for and obtain a divorce from the Kathi.

For this proposition Ameer Ali and Wilson are cited. Now Wilson at p. 153, 6th Edition, commences with the definite proposition that neglect or inability to afford proper maintenance does not entitle a wife to claim a judicial divorce. He is, however, dealing primarily with the Hanafi school and the editor goes on to say (at the top of p. 154) that Shafei permits judicial divorce if the husband is unable to provide her with necessities. This is amplified at the top of p. 423 where it is stated that Shafei's exception is limited to cases where the husband is unable to afford maintenance on even the lowest of the three recognised scales. As to these he refers to the Minhaj. In Howard's translation the passage begins at p. 383 and its effect is, shortly, that men are to be divided into three classes according to whether they are solvent, of moderate means or insolvent. The state is determined for each day at dawn and the barest necessities of life are sufficient to satisfy the law. Nawawi was clearly not considering the case where the wife has substantial independent means but even if this point be disregarded (which, in my view, would be unreasonable) the fact remains that when the husband refused \$150. a month he offered maintenance according to his means. This would be sufficient to exclude the judicial



divorce in this case. Ameer Ali (at the top of p. 416) is to the same effect. "Inability to provide maintenance... affords ground for faskh" (? *fasah* or *pasah*). Wife's case (contd.)

(XII) Notwithstanding that she was (as contended above) entitled to a judicial divorce without payment, she offered to "purchase" her divorce by returning the *mas kawin* and \$1,500.

(XIII) The direction complained of was in truth, a *khula* or (in Malay) *tebus talak*.

This is correct (and is further examined *infra*, page 25).

(XIV) In pure Mohammedan law the Kathi has power to order a *khula*.

This contention is founded on Wilson, 5th Edition at p. 150. In my opinion, the passage simply will not bear the meaning put on it by the wife's solicitors. The substantive paragraph, No. 77 on the preceding page, is wholly against the contention. The commentary on p. 150 is founded on admittedly ambiguous authorities. What the commentator actually says is that the authorities on pure Mohammedan law make it probable that the Indian Courts would use their discretion. This passage is somewhat altered in the 6th Edition at p. 154 which refers to a Burma case of 1820 (meaning, surely, 1920) which cannot be found in our Library. In both editions the very next words refer to procuring *khula* by family pressure.

It is also submitted that this point has never been decided. Actually it was decided in *Rokiah v. Abubakar*, (though, of course, that decision was not available to the solicitors) but that case was different in a material respect (see p. 9 *supra*).

(XV) That by Malayan custom a wife who refunds the *mas kawin* and marriage expenses is entitled to require her husband to give her a *talak* divorce and if he refuses the Kathi can order him to give it.

This paragraph is the wife's argument for upholding the "Direction".

(XVI) Discussion of the terms *pasah*, *talak*, etc.

(XVII) Renews the tender of the *mas kawin* and marriage expenses.

(XVIII) The wife prays:—

(a) For an Order by the Governor requiring the husband to register the divorce, in accordance with the Kathi's direction of 21st September, 1939, or

Wife's  
case (*contd.*)

- (b) For an Order by the Governor substituting for that direction a judicial decree of divorce (*pasah*), or
- (c) For an Order by the Governor "in support of the divorce".

Registrar's  
Opinion.

The Registrar of Mohammedan Marriages, Mr. L. Forbes, M.C.S. is of opinion:—

- (a) That *khula* is not necessarily by consent;
- (b) That the direction complained of was an application of the Malay custom of *tebus talak*;
- (c) That the fourth condition is valid and therefore the wife is entitled to a triple divorce (*tiga talak*) which is enforceable under section 19 of the Mohammedans Ordinance;  
[This is the crux. How can such a direction be enforced?]
- (d) That the wife preferred *tebus talak* "for personal reasons";
- (e) That the direction complained of is in accordance with Mohammedan law.

Mr. R. J.  
Farrer's  
Opinion.

Mr. R. J. Farrer (M.C.S. retired) refers to the different kinds of divorce and especially to the well-known condition (*taalik*) to the effect that if the husband is absent for a year divorce shall come to pass of itself. On proof that the absence has occurred the Kathi registers the divorce.

Mr. Farrer suggests therefore that the Governor should confirm the divorce but declare it to be under section 19 (*taalik*). I do not think this is possible because the condition or stipulation of the marriage in question was not that the divorce should come to of itself but that the husband should pronounce it.

Fundamental  
Principles.

In order to understand this dispute it is, I think, necessary to restate one or two fundamental principles.

*First:* Mohammedan divorce takes place by the act of the parties themselves (see "Malay Family Law" at page 6).

*Secondly:* The Kathi is primarily an ecclesiastic; he is not a judge in the strict English sense (see Wilkinson at p. 65).

*Thirdly:* Law and religion are interwoven.

*Fourthly:* The system has changed very little since the time of the Prophet himself when spiritual and temporal power were in the same hands.

In pagan days the Arabs could divorce their wives at will, merely by pronouncing *talak*, but the wives had no remedy whatever; many of them were actual slaves. The Prophet imposed some restrictions on the man and gave some rights to the woman. In theory the husband can still divorce his wife at will, merely by pronouncing *talak*, but in practice he is restrained:—

Principles of divorce

- (a) by religious precepts. The Prophet sternly condemned capricious divorce;
- (b) by economic considerations. The wife becomes entitled to various payments.

Technically, divorce still proceeds from the man, save in one or two exceptional cases.

The husband can pronounce *talak* himself or he can authorise an agent to pronounce it. The wife herself may be the agent. If a wife wants a divorce, therefore, she must in some way persuade or induce her husband to give *talak* (see Wilkinson at p. 58).

If he agrees and gives it without conditions it is called, in Arabic, *mubarat*. If he demands payment but they are eventually able to agree on the terms—then it is called, in Arabic, *khula*. Neither of these terms is usual in Malaya. In either case the divorce is founded on agreement; the husband gives *talak* and the divorce is registered as a *talak* divorce. *Tebus* is plain Malay for “redeem”. *Tebus talak* is therefore a local expression meaning “divorce for consideration” which does not appear to be distinguishable from the *khula* of the text writers.

Meaning of Terms.

*Taalik*, in my opinion, does not mean divorce and I think the term is misused in the amendment to our Ordinance. The expression is *nikah taalik* meaning “marriage with a stipulation”. In Malaya the usual stipulation is that if the husband leaves his wife for six months, he being ashore, or for a year, he being over the sea, then divorce shall come to pass of itself—*talak gugor sendiri*. The formula varies; sometimes the phrase runs “she may divorce herself with one *talak*”.

Nikah Taalik.

It is true that in practice the divorce is not deemed to have come to pass willy-nilly. The wife may wait a while longer than the stipulated period and in any case she must satisfy the Kathi of the facts and obtain his certificate of registration of the divorce. But the point is that the divorce is not against the will of the husband. On the contrary, it proceeds from him; at the marriage he, or his *wakil*, must actually read the stipulation in which the word *talak* occurs. It is a point substance, not a legal fiction, that the divorce of a *nikah taalik* is an instance of divorce by *talak*.

## The Crux.

In my opinion the real question in this case can be stated quite shortly thus:—What is the true meaning and effect of the Kathi's direction of 21st September, 1939?

The history of the matter is clear. The wife applied to the Kathi who, after preliminary enquiries, formed the view that the case was a serious one and appointed mediators. They failed to settle the matter and the Kathi proceeded to hearing and adjudication. The wife wanted divorce and the husband objected to it.

## The Conditions of the Marriage.

Now, first of all as to the conditions or stipulations of the marriage. It is obvious that the wife could not obtain a divorce merely because the husband objected, however unreasonably, to one particular visit or merely because he once asked her to go to live in Penang. Clearly, therefore, it is not the case that a breach of any condition is a ground for divorce. Each condition must be examined separately to ascertain its effect and what the appropriate remedy for its breach may be. The one in question is the fourth; the husband has married again, yet he will not give the triple divorce as required by the condition.

There is no provision of Mohammedan law which authorises the Kathi to pronounce the *talak*. The true answer to this part of the wife's case is that she accepted an inadequate stipulation. She should have insisted on wording it that if the husband took another wife she should thereupon become entitled to pronounce the triple *talak* for herself (see Wilson, 6th Edition, p. 144). I am not imputing blame to the wife or her advisers; they could hardly have foreseen the present impasse but we must deal with the stipulations as they are—not as they might have been.

## Kathi's decision.

On the case as a whole the Kathi considered that the marriage ought to be dissolved on terms and he approved a suggestion by the wife's representative that she should return the *mas kawin*. In the Order (p. 17) it is called *talak khula*. The more usual term in Malaya is *tebus talak* but the meaning is the same. A *khula* divorce is completed by the giving of *talak*. (Ameer Ali, p. 506). The husband himself did not agree or even submit to the Kathi's award. He had resisted divorce on religious grounds and he objected that the Kathi had no power to order *khula* against the will of the husband. He did say, however, that he would submit if the order were in accordance with Mohammedan law. The Kathi therefore wrote to the husband a letter stating his decision and enclosing in support of it a copy of the story of Sabith which is the traditional foundation of *khula*.

The main question is whether the Direction is a merely pastoral injunction which the husband need not follow, though he might be morally justified in following it, or whether it is a judicial

injunction which he is legally bound to obey. If the latter, there is a further question as to how the award is to be enforced.

The Kathi's version of Sabith's case is that the wife appeared before the Apostle of God and said:—

Sabith's  
case.

"I do not criticise Sabith for his manners or his religion but I hate unbelievers".

The Apostle of God said:—

"Will you then return to him his (garden)?"

She replied:—"Certainly".

Then the Apostle of God said:—

"Take the garden and divorce her by making one declaration"

Wilkinson, at p. 57, gives the following account of the same, or a similar, incident.

"A certain woman went to the Prophet and made a complaint against her husband. The Prophet advised her to surrender her 'dowry' so as to induce her husband to divorce her. 'I will give that and more' said the woman. 'Nay, not more' was the reply."

Was this direction, by the Prophet himself, compulsory or hortatory? I have no doubt whatever that it was neither but both. The distinctions between Church and State and between Executive and Judiciary are now so firmly embedded in our constitution that we react to them subconsciously but in early times these distinctions simply did not exist.

When Samuel forbade Saul to spare Agag was it hortatory or compulsory?

When a Chief sits to administer tribal justice there is no question of decree and execution as separate matters. Judgment is given and the unsuccessful party simply must obey, unless he chooses to flee the country. To defy the Chief and remain would not be tolerated. Mohammedan law was founded when society was in an early stage of development and it has changed very little through the centuries.\*

The Malayan Kathi is not a judge in the modern English sense. If the parties cannot agree they must "wait for agreement". The Kathi gives them advice and adjourns the matter. Family pres-

Powers of  
Kathi.

\* See page 33

sure, the force of public opinion. the wearing effect of postponements and "holy deadlock" all combine to make the unwilling party submit. It is clear from Wilson (pp. 147, 154) that the consent of the husband need not be willing consent. Reluctant submission under pressure is a sufficient consent for a valid *khula*. This is also the Malayan view. In *Siah v. Sitam*, for instance, (The Customary Law of Rembau, p. 109) the Court, the Kathi, the tribal Elders and the District Officer all combined to procure the consent of a reluctant husband in circumstances very similar to these. The husband now in question is in the position described in section 77 of Wilson but in the circumstances of this case the "inconveniences" fall chiefly on the wife.

"Judicial  
divorce".

There are expressions in the books which, if detached from their context, might suggest that the remedy of judicial divorce is available in such cases but I am convinced that this is not so. The confusion is partly due to the use of ambiguous terms. In some passages the phrase "judicial divorce" is used for judicial separation. Moreover, in some countries registration by a Kathi is not universally necessary, as it is in Malaya, and therefore the approval of the Kathi is not essential to the validity of *talak* in all cases, though it is necessary for *khula*. Consequently, *khula* in those places may be called a "judicial divorce". Rokiah's case (p. 10 *supra*) shows that a judicial divorce, in our sense of the term, cannot be granted by the Kathi in a case of *khula*. Moham-medan law does not allow judicial divorce, in this sense, except for desertion (which is allowed only by Shafei), possibly for cruelty, and for certain rare causes called *ila* and *la'an*. Some writers include impotence but that is a ground for nullity rather than divorce. None of these apply and therefore the wife's plea for *pasah* must be rejected.

In India there are now no Kathis, their powers having devolved on the Courts, and it has therefore been suggested that an Indian Court might by injunction, and ultimately by committal to prison, compel a husband to carry out a stipulation of the marriage (see Ameer Ali, p. 523). There is, however, no case in which that has actually been done and it is clear that the High Court of the Colony has no such jurisdiction.

Effect of the  
"Direction".

The position is therefore that the Kathi has given his direction, which is entirely correct, but there is no legal machinery to enforce it and an Order by the Governor, affirming the Kathi's direction, will likewise be without legal sanction. Nevertheless, I do not think that such an Order would be without effect. The Mohammedan community respect their Kathis and also, like all the other communities, they respect the law of the Colony. If anyone says to the husband today:—"The Kathi told you to give her a divorce", he can reply:—"But I have appealed to the Governor"



and this certainly helps to save his face. If, tomorrow, the friends and neighbours say:—"Well, the Governor has told you, as we did, that the Kathi is right"—What is he going to do then?

Moreover, the husband has contended very strenuously through-out that the Kathi's order (as it has been called) is against Mohammedan law and it is, I think, quite practicable and very desirable for the Governor's decision to be conveyed in terms which will make the true nature of the direction more clear. This may add to its effect. It seems doubtful whether the husband will, for long, maintain his present attitude against the Governor's ruling but this is not the main point nor, in my view, a very important one. The Kathi's order, though correct, is not enforceable by legal process but the unenforceability is not due to any defect of our statute. I think that the true Mohammedan law relies on moral power for its enforcement and that the position reached under the Ordinance, unsatisfactory though it may be to the wife in this case, does, nevertheless, accord with pure Mohammedan law.

It is true that in this case the Kathi procured the issue of a Police Court summons and this might be regarded as an attempt to enforce the Kathi's award indirectly by legal means. I do not think that it was so intended. The summons was not for failing to register a divorce but for failing to attend. The husband had promised that he would pronounce the *talak* if the Kathi's award was in accordance with Mohammedan law. The Kathi had supported his award with authority which must have seemed to him conclusive. More than two months had elapsed and the Kathi had merely been told by the husband, by letter, that he was preparing an application to the Governor. No official notice of any kind appears to have been given to the Kathi. In these circumstances I think the Kathi was entitled to proceed as he did, apart from the fact that he had been so advised by the Registrar. He had clearly no intention of registering the divorce himself (as was wrongly done in Rokiah's case, *supra*). He was seeking to compel attendance in order to make the husband declare his attitude and, if necessary, to subject him to further moral pressure. The husband could have attended and applied for a postponement on his undertaking to lodge his application for revision within a specified time. Had he done that he would not have been prosecuted.

The Police  
Court  
Summons.

On this aspect I think that our legislation has a flaw. We ought to fix, by Rule, a time, say one month, within which applications under section 25 must be lodged.

For all these reasons I am of opinion that both the husband's petition for revision and the wife's cross-petition should be dismissed but that the decision should be conveyed to the parties in

Conclusion.



specially chosen terms. The nature of the terms suggested will appear from the accompanying draft letters.\*

16 Sep. 1941.

Attorney  
General's  
Opinion.

The Hon. Mr. C. G. HOWELL, K.C., *Attorney General*, (After acknowledgments). This matter has hung fire for a long time, chiefly owing to the dilatoriness of the parties, and the time has now come for His Excellency to give his decision.

There are three points for decision:—

- (1) Whether a stipulation, agreed to at the time of the marriage, that the husband would not marry another wife during the lifetime of Inche Fatimah and that if he did he would, if so requested, immediately divorce Fatimah, with three *talak*, is valid according to Mohammedan law;
- (2) Whether the Chief Kathi's "decision" of 21st September, 1939, was in accordance with Mohammedan law; and
- (3) Whether there is any ground for the husband's allegation that the wife was recalcitrant.

As to (1), I think there is no doubt that this is a valid, and by no means uncommon, stipulation. It comes ill from the petitioner to attack the validity of the conditions upon which he was enabled to marry. He was of age according to Mohammedan law.

As to (2), this is the crux of the matter and I do not think that either party has stated the position accurately. The position is curious to our way of thinking because the Chief Kathi has not purported to *decree* a divorce at all—he has merely directed the husband to divorce his wife, as he is under an obligation to do. There is, as far as I know, no legal means of enforcing such a direction which, however, would normally be obeyed without question by a good Mohammedan and will, I hope, be obeyed in the present case if His Excellency sees fit to decide that the Chief Kathi's decision is in accordance with Mohammedan law. I have no doubt that this position arises from causes now almost obscured by modern divisions of ecclesiastical, judicial and executive power; in the days of the Prophet there would be no visible separation of these functions and in any of the cases cited it is difficult to see whether any particular decision or direction was made or given on religious, legal or other grounds and this was probably irrelevant because it was unquestioningly obeyed. In my opinion the decision of the Chief Kathi was in accordance with Mohammedan law.

As to (3), it follows from the above that the wife was not recalcitrant.

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\* See pages 31, 32

There are several subsidiary points which are outstanding but they are dealt with in the draft letters which I enclose.

The decision of the Governor, His Excellency Sir Shenton Thomas, G.C.M.G., was contained in the following letters from the Colonial Secretary to the solicitors for the parties. Governor's decision.

*Letter to the Husband's Solicitors.*

I am directed to refer to the application of your client, Syed Ahmad bin Omar Alsagoff, for revision of the decision by the Chief Kathi of Singapore, dated 21st September, 1939, in the dispute between your client and his wife, Inche Fatimah binti Daing Lalalida, and to inform you that His Excellency the Governor has considered your client's petition and the connected documents and has come to the following conclusions on the questions at issue. 25 Sept. 1941.

(a) The four conditions or stipulations of the marriage were valid according to Mohammedan law. They were agreed to by your client's father, Syed Omar Alsagoff, and also by your client himself, then about twenty years old, and are binding on your client.

(b) The decision of the Chief Kathi of 21st September, 1939, was in accordance with Mohammedan law.

(c) Your client's application for a declaration that his wife, Fatimah, was recalcitrant was, by necessary inference from that decision, dismissed.

I am to add that the Governor finds no evidence of any bias against your client on the part of the Chief Kathi. On the contrary, it appears that the Chief Kathi showed patience and thoroughness.

I am also to point out that the Police Court summons of which your client complains did not charge him with failing to register the divorce but with failing to attend at the Chief Kathi's office when so required. It was your client's duty to attend on the 2nd December. He had not then lodged his application for revision and his mere statement that he was preparing a petition was not a sufficient reason for failing to attend. If he had attended and applied for an adjournment, pending revision, further time could have been granted.

It appears that your client may not have understood correctly the decision in question and modern distinctions between religious injunctions and judicial injunctions may have obscured the true position in Mohammedan law. The command to Sabith to pronounce the *talak* was not one which it was open to Sabith to dis-

regard. In the Colony the law of the Prophet is preserved with as little change as is possible and the Chief Kathi is the local representative and inheritor of the traditional authority of the Prophet. In pursuance of that authority he directed your client to pronounce the *talak*. Your client stated in his evidence before the Chief Kathi that he would submit to the Chief Kathi's decision if it was in accordance with the Mohammedan law. The Governor, in exercise of his statutory powers, has now decided that the decision is in accordance with the Mohammedan law. Messrs. Braddell Brothers are being advised accordingly and they will send the ring and the *mas kawin* of \$22.50 to you. It is therefore expected that your client will pronounce the triple *talak* and duly register it as soon as soon as possible.

I am to request you to inform me when this has been done so that directions may be given for the summons against your client to be withdrawn.

*Letter to the Wife's Solicitors.*

25 Sept. 1941

I am directed to refer to the differences between your client, Inche Fatimah binti Daing Lahalida, and her husband, Syed Ahmad Alsagoff, and to inform you that His Excellency the Governor has now considered their petition and cross-petition for revision of the Order made by the Chief Kathi of Singapore on 21st September, 1939.

The Governor is of opinion that the Order complained of is in accordance with Mohammedan law and that in the circumstances it was properly made but it may not have been correctly understood.

The direction of the Chief Kathi given on 21st September, 1939, followed the precedent established by the Prophet in Sabith's case but it is not susceptible of enforcement by modern legal methods. In the circumstances of this case, however, and having regard, among other matters, to your client's prayer for an order "in support of" the Chief Kathi's decision, the Governor has informed Syed Ahmad, through his Solicitors, that his proper course is to pronounce the *talak* as directed and to register the divorce. You should therefore send the ring and the sum of \$22.50 to Messrs. Sisson & Delay.

It is not necessary that your client should refund the \$1,500. on account of marriage expenses.

The wife's solicitors accordingly sent the ring and \$22.50 to the husband's solicitors.

The husband's solicitors replied to the Colonial Secretary Result.  
as follows:—

We have the honour to acknowledge receipt of your letter 6 Oct. 1941.  
of the 25th ultimo. Our client has, of course, carried out His  
Excellency's direction and has granted a divorce to his wife.

### Notes.

To examine the question of the admissibility of the *fatwa* would Farwa  
have involved a lengthy digression into the law of evidence. They  
were open to challenge on a number of grounds but it is probably  
sufficient to say that they were not *ante litem motam*. The Attorney  
General concurred in rejecting them without comment. (See also  
page 38.)

With regard to the observations on page 30 regarding separa- Separation  
ration of powers it is not the case that what are called modern of powers.  
distinctions are general in the modern world.

The husband in this case was an Arab. Had he been residing  
in Saudi Arabia his attempt to distinguish between "advice" and  
"order" would have received shorter shrift.

H. C. Armstrong's biography of King Abdul Aziz contains  
several illustrations of the enviable judicial methods of that Ruler  
who, be it observed, still reigns.

A certain woman complained that her neighbour's cow had  
eaten the young lettuces in her garden. The defendant denied  
this. King Abdul Aziz ordered the cow to be killed. His scimitar  
man slew the cow on the spot. "Open her stomach" said the King.  
The cow's stomach contained undigested green leaf. "But what of  
the carcase, Sire?" "The meat is the woman's damages" said the  
King.

That was a question of fact, disputed at first instance, but  
appeals from Kathis are disposed of no less expeditiously in Arabia  
Felix.

## Procedure under the Mohammedans Ordinance.

### Mufti.

In *Rokiah v Abubakar*, (p. 10) the Registrar of Mohammedan  
Marriages, Penang, sat with two Mufti to hear the appeal. It  
appears that there was a panel of Mufti from whom two persons  
were chosen, subject to challenge by the parties. It is, however, a

question whether the Ordinance contemplates the appointment of more than one Mufti for each Settlement.

### **Advocates and Solicitors.**

In the same case the Registrar had to consider the somewhat difficult question of the position of advocates and solicitors under the Ordinance, and after much deliberation he excluded them from the hearing of the appeal. This decision was based partly on grounds of policy and partly on the somewhat vague provisions of the Ordinance. The point was not taken in the petition for revision so no opinion on it was expressed by the Attorney General or by the Governor.

The Registrar thought that since the proceedings from the Kathi to the Governor are all under the one Ordinance the solicitor's right to act, if it is a legal right, must exist either at all stages or none but this is not necessarily correct. It is possible that different considerations apply at first instance and on appeal.

It does not appear that a lawyer had ever actually sought audience before a Kathi but solicitors had been consulted by both sides during the proceedings before the two Kathis successively concerned in this case and the delay and frustration were attributed, in part, to their intervention. It is clear from the Ordinance as a whole that the intention is that Mohammedan law should be administered as far as possible by Moslems and without reference to the English law, procedure or language. Some of the forms used for registration may be printed in two languages for convenience but the Kathis are not required to write or speak English and few of them do so. It is not desirable that they should. Their function is to know and apply Mohammedan law and the customs of the communities concerned.

Now a solicitor is primarily an agent and the Mohammedan law has various provisions concerning agency. Nawawi mentions many acts which a party may do by an agent, especially in relation to marriage and divorce. Over and over again it is laid down that the agent must be a sane adult Moslem and in relation to the matters here considered it is usual for the agent to be chosen with the approval of the Kathi from the relations or friends of the principal.

In English law a man may, in general, employ any agent he pleases but, for reasons of public policy, his choice is limited in matters requiring special skill, to a panel of qualified persons. For instance, only licensed persons may be employed as pilots or auctioneers. The so-called right or exclusive privilege of a solicitor to represent his client in litigation is not in truth a right of the solicitor but a limitation on the right of the client to choose

his agent. This is explained in the very interesting judgment of Mr. Justice Deane, as he then was, in *Mundell v Mellor*, 1929 S.S.L.R. p. 152.

It appears therefore that on principle and not merely as a matter of practice, a party has no right to be legally represented in proceedings before a Kathi though he may be represented by a suitable Moslem agent. As a solicitor need not have any more knowledge of Mohammedan law than any other Moslem he is not specially fitted to be such an agent and professional feeling would probably lead him to decline unless there were no other suitable person available in the particular case. It is probably for this reason that the point has never been specifically raised.

The legal position is, shortly, that a Solicitor has no right or privilege of audience before a Kathi. If he is not a Moslem he is disqualified. If he is a Moslem he is eligible in the same way as any other Moslem.

In an appeal where the Registrar sits with the Mufti the same principles apply.

But in appeals to the Registrar alone different considerations arise. Such proceedings are unknown to the traditional Mohammedan law; their whole existence depends on the local statute; they are conducted by non-Moslems and in the English language. There does not appear to be any reason founded on principle or convenience why any solicitor should not prepare grounds of appeal and also appear at the hearing in such cases. The Registrar is probably not a Court although some of his proceedings are essentially judicial in character and the procedure is regulated, though not comprehensively, by Rules made under the Ordinance. It seems, however, that if the issue were forced, as in *Mellor's case*, *supra*, he might be directed to allow a solicitor to appear and argue, if he were sitting alone.

As to the preparation and filing by a solicitor of grounds of appeal to the Registrar there might be a difficulty because it would not be known at that stage whether the Registrar would sit with the Mufti or alone; he might wish to see what the grounds were before he decided. If he were consulted at that stage he could use his discretion according to the nature of the case. In so far as the appeal turned on the construction of the Ordinance skilled legal aid might be welcome. If the main issues were of pure Mohammedan law the intervention of a solicitor might be of little use. In *Rokiah's case* the Registrar allowed solicitors to file grounds of appeal but refused to admit them to the hearing and this was almost certainly a sound exercise of discretion in the circumstances.



### Grounds of Judgment.

As regards the record of the appeal, the Registrar promptly supplied to the solicitors a copy of his notes of the hearing to enable them to prepare the application for revision by the Governor but, despite their vigorous protest, he refused to give them his grounds of judgment. His chief reasons were that no precedent for giving them could be found; that since the statute and rules were silent it was in his discretion; that he considered it undesirable for solicitors to act in proceedings under the Ordinance and that the notes of evidence were sufficient for their purpose. Also some of his observations on the procedure were of a confidential nature.

With all due respect to the Registrar it is submitted that his view that the notes of hearing were sufficient was misconceived. In a case raising several issues, some may be decided in favour of the losing side. If an appellant has only the notes of hearing without the grounds of judgment he is handicapped, for he cannot confine his appeal to the points really decided against him.

In the end the Registrar prepared his grounds of judgment in two parts.

It would have saved a great deal of trouble for himself and every one else if he had delivered the first part, which is reproduced on page 12, to the solicitors and sent the second part to the Governor in the form of a report on the case. There is no reason why a Registrar should not send a supplementary report to the Governor whenever he thinks fit.

### Revision.

The position of solicitors in Revision by the Governor is less difficult. Where a right of appeal to an administrative or other authority is given and no special procedure is prescribed, the ordinary procedure of that authority is applied by necessary implication. The procedure of the Governor is well settled. The applicant submits his case in writing, with or without the aid of a solicitor as he pleases, to the Colonial Secretary who calls on the officer or department concerned, in this instance the Registrar of Mohammedan Marriages, to furnish the record or other relevant materials and a statement of his own opinion on the matter. If the case so requires, the Colonial Secretary affords to the opposite party an opportunity to reply; he then obtains the written advice of such officers or other persons as he may desire to consult and the Governor gives his decision. As any question involving a point of law is invariably referred to the Law Officers detailed rules of procedure at this stage are quite unnecessary.



In *Syed Ahmad v Fatimah* (page 14) the question whether the Governor would hear legal argument was expressly raised by the Solicitors for the parties. The Law Officers told them that as no case was known where there had been such a hearing they should proceed as above, in the first place, adding that the point would be considered further, if necessary, after perusal of the written submissions. In the event, the ordinary procedure proved adequate and the Attorney General pointed out that no party had any right to be heard by the Governor. [This does not mean that the Governor has no power to hear advocates if special circumstances make it desirable].

There is, however, one flaw in the existing Rules. The Law Officers cannot have any control over the proceedings until the application for revision has reached the Colonial Secretary. If delay and useless correspondence are to be avoided it is essential that the parties should know what steps they should take to bring the matter before the Governor for revision.

The delay in filing the application in *Syed Ahmad's* case had several unhappy results. It was therefore recommended that a short additional Rule should be made, setting out what the parties are required to do at that stage and limiting the time within which the application may be lodged. Had such a rule been in force in 1939 *Syed Ahmad's* petition would have been reduced to less than half its actual volume; it is doubtful whether *Fatimah* would have been called upon to reply and the proceedings would have been shortened by not less than a whole year.

As the Japanese entered the war only a few days after this recommendation was submitted no action could be taken but the draft rule is printed here so that it may yet be considered by the Rule-making authority and also, since it embodies the substance of lost precedents, it may be useful as a guide to sound practice, even without any legislative force.

### **Proposed addition to the Mohammedan Marriage and Divorce Rules.**

[1935 O.R.R., p. 115]

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“13(i)—An application to the Governor for revision of any proceeding under section 25 of the Mohammedans Ordinance may be in the form of a letter addressed to the Colonial Secretary and must be delivered to him by post or otherwise within one month from the date of the decision, order or act to be revised.

(ii). The application must be in duplicate and must contain:—

- (a) A concise statement of the decision, order or act;
- (b) A concise statement of the grounds of objection;
- (c) A concise statement of the relief claimed.

(iii). The Colonial Secretary will, if necessary, call upon the opposite party to reply to the application and will fix the time within which the reply is to be delivered.

(iv). The Governor will ordinarily decide the matter on the evidence already recorded. No additional evidence of fact or opinion or *fatwa* may be adduced unless the permission of the Governor to adduce such further evidence is first obtained."

### **Fatwa.**

It is not unusual for the parties in these cases to seek to support their arguments by submitting written opinions on points of Mohammedan law. If these are taken from published works they are not inadmissible but there may be great difficulties in translation and especially in ascertaining their true context; also there may be grave doubt as to the weight which may be attributed to authorities not specified in the Ordinance. The use of such extracts should therefore not be encouraged.

Where, however, it is sought to adduce the opinions of living persons different considerations arise. The Kathis are not acquainted with the Colonial law of evidence. The Registrar is probably not, and the Governor is certainly not; a Court; from this it is frequently argued, (not only under this Ordinance but under other laws too) that the Evidence Ordinance does not apply and that the parties can therefore put forward whatever materials they choose. Nothing could be more dangerously misleading. It may be correct that the Evidence Ordinance is not technically binding on the Registrar or on the Governor but the law of evidence is not an arbitrary system like the laws of chess. It has been built up during centuries, mainly by practical decisions; its chief provisions are not essentially technical; they are permanent principles necessary for the ascertainment of truth. If a *fatwa* would be legally inadmissible in a Court, not merely for want of some technical requirement, such as certification, but inadmissible on principle because, for example, it was given only after the dispute arose, then it is not entitled to any weight. Also if, as often happens, no indication is offered of the form in which the question was put, the answer is vitiated. *Fatwa* of this kind should therefore be rejected, as in *Syed Ahmad v Fatimah*, (see p. 33).

### Expert Witnesses.

The question whether a witness may be called to give oral evidence of the Mohammedan law is not free from difficulty.\* The general principle is that the Court itself propounds the law and receives evidence only as to matters of fact. The practice of the Kathis at first instance seldom, if ever, departs from this rule. The general principle on appeal is that further evidence is not admitted except as to matters which the party could not reasonably have proved at the hearing. As the Registrar is usually without expert personal knowledge of the Mohammedan law it might be difficult for him, sitting alone, to decide questions of that law and it is probably for that reason that Mufti are appointed. It is submitted therefore that where an appeal involves the decision of difficult points of Moslem law the Registrar should ordinarily sit with the Mufti and not admit oral evidence of the law. Where he sits alone it is a matter for his discretion but he should only admit such evidence in special circumstances.

In Rokiah's case the Registrar though sitting with Mufti, allowed an eminent local Moslem to be called as an expert on the Mohammedan law; the witness immediately sought to prove the opinions of other persons as well as his own, thus introducing further difficulties. The precedent is therefore one to be followed only with great caution.

### Author's Note..

The writer wishes to emphasise the fact that these observations on procedure were formulated while the case was still under active consideration and long before his appointment to his present position. They are the opinions of a text writer only and must not be taken as in any way binding on the author, still less on any of his colleagues, who in the unlikely event of such a question requiring judicial decision might come to different conclusions after hearing argument.

The decisions of the Governor are, of course, binding on Registrars and Kathis.

### Bibliography.

For Bibliography, see page 130.  
In addition all the well-known works on Mohammedan law available in Singapore were consulted.

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\* See *Laton v. Ramah*, 6 F.M.S. Rep. 128 (C.A.) but that decision has often been disregarded in practice and is now a doubtful authority.



# INHERITANCE IN NEGRI SEMBILAN

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## INTRODUCTION.

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### The Question.

In Tampin Distribution Suit No. 11 of 1938 the District Officer stated a case for the opinion of the Judge and Mr. Justice Cussen held that the land in question should be distributed according to local custom. The Resident of Negri Sembilan asked for the views of the Law Officers "as to the best way to safeguard the position, in view of this judgment" and in 1940 the Law Officers invited me to give my opinion on the matter. Two papers were submitted—N.S. 1396/37 which includes a copy of the judgment mentioned above, then unreported, and N.S. 1179/29 which deals, among other matters, with the Customary Tenure Amendment of 1930. These papers contain opinions and decisions of a number of Judges, Residents and District Officers including one memorandum which goes back to the first migration of the Malays from Sumatra. The discussion ranges over the whole period from pre-history to the latest decision and the matter was therefore reopened in a very broad and general way. The problem on which advice was sought had not been formulated; it was still under consideration when the Japanese invaded Malaya and arose again very soon after the reoccupation. Perusal of the correspondence shews that the actual question at issue is a limited one which may be stated thus:—

"What are the rules of distribution of the land, other than ancestral land, of deceased Malay proprietors in the Districts of Kuala Pilah, Jelebu and Tampin?"

There are statutes which provide procedure but there is no Statute of Distributions which applies to Malays in any of the Malay States.

The opinions of the District Officers vary considerably and some of the decisions of the Judges, on appeal from the District Officers, are conflicting. It is therefore necessary to go back to first principles and also to trace the history of the matter and the effect of legislative changes.

The officials concerned may be divided into three classes, the District Officers, who are mainly concerned with individual cases at first instance; the Residents who are concerned with a certain class of cases on appeal and are also concerned with the matter



in its more general aspect in their capacity as legislators and the Judges who are concerned only with particular cases on appeal.

### The Approach to the Problem.

These officers are drawn from different branches of the public service; they differ widely in experience, knowledge and outlook and therefore they approach these problems in very different ways. Inevitably their conclusions are discordant. A Malay Officer may have had many years of experience in land offices, but he has had no training, legal or otherwise. He may have been "instructed" by a Resident that a particular statute had a certain effect. A Judge may have spent twenty years in the Chinese Protectorate, and passed the Bar examinations while on leave, after which he may have conducted many prosecutions in assize courts and drafted (or adapted from English models) many Rules and Regulations for the Gazette. Even if they come to the same conclusion as to the technical effect of a statute in a given case, can it be said that they were in agreement? Where written judgments are delivered it is often found that they reached their conclusions by totally different routes and were never in agreement as to the *ratio decidendi*. In Indun's case, discussed at page 88 *infra*, neither the Collector nor the Judge ever touched on the question which was at issue between the parties.

I think every one is aware that the Malays of Negri Sembilan follow a special custom or *adat* relating, among other matters, to property and inheritance, which differs from the general law. This, however, is not enough to enable anyone to follow this correspondence because the various officials who have already contributed to the discussion do not use their terms consistently. In particular, few of the administrators have ever formed in their own minds any explicit idea of what they mean by "the general law" and this is one of the reasons for their divergencies of view.

### The General Principle of Law.

Actually there is no "general law" in the sense of a general law of inheritance. The only general proposition is that in matters of a personal nature such as divorce, guardianship and inheritance, the court ascertains and applies the law or custom to which the parties are subject. This is a principle not only of the English law but also of many foreign laws.

If the deceased was an Englishman settled in England his property devolves according to the English law relating to distribution. If a Frenchman dies leaving personal property in England, then the law of England is that the property must be distributed not according to the English law but according to the French law of distribution. The rules for deciding whether a foreign law applies are part of that branch of English law which

is called "the Conflict of Laws". The rules for deciding what actually is the foreign law, on a particular point, are part of the law of evidence.

But in countries such as India, where the population is not homogeneous, it is not possible to settle a question with reference merely to the country to which the deceased belonged because there is no law of inheritance applicable to India generally or even to all the people in any given province. An Indian court ascertains to which community the deceased belonged and distributes the property according to the law of that community. Therefore, if an Indian dies leaving property in England the court in England ascertains and applies the law of the community in question. This is a specialised branch or subdivision of the topic called the Conflict of Laws.

It is essential to bear in mind that the law to be ascertained is the law of the community and the community may be defined by reference to place, as France, or to Nationality, as in the case of a German resident abroad, or by race, as in the case of a Chinese in Kedah or in certain circumstances by reference to religion. It is important to notice this qualification concerning religion. It cannot ever be the rule that religion is by itself decisive for the simple reason that, for example, neither Christians nor Buddhists have any religious law of inheritance. Moreover, even in India where two of the most widely practised religions have a law of inheritance, it is not correct to say that inheritance follows the religion. There are established communities which were originally Hindu and later were converted to Islam but retained the Hindu law of property as a customary law. The Indian Courts apply the Hindu law of inheritance to these Mohammedan communities. In Malaya, we are, of course, in a position similar to that of India; we have an internal conflict of laws.

The only way, therefore, in which the proposition can be truly stated in general terms is by reference to the community and it is usually and compediously expressed by saying that "the law follows the person".

Now this proposition is part of the statute law of the Malay States. Section 184 of the Probate and Administration Enactment, which applies to all estates under \$3,000 regardless of race and religion, expressly enacts that the estate shall be distributed according to the law or custom having the force of law, applicable to the deceased. Nevertheless, many administrative officers and some of the judges consciously or unconsciously fight against this principle. Ambiguous terms such as "Customary land" have induced in their minds the idea that the law follows the land. They do not realise

that they are fighting against the express terms of the very statute which gives them jurisdiction.

The judges also differ among themselves but along different lines of cleavage. Some few appreciate (though seldom expressly stating) the fundamental proposition that "the law follows the person" while others remain oblivious of this principle and base themselves on a literal interpretation of isolated sections. As these actually deal only with procedure, consistent propositions of substantive law cannot be deduced from them. The judges, however, do confine themselves to what they consider the existing law to be, whereas the administrators not infrequently fail to distinguish an opinion as to what the law is from an opinion as to what the law ought to be.

The consequence of all this confusion of thought is, naturally, that the discussion has become almost unintelligible. It is only possible to follow the arguments in the minute papers if the reader, so to speak, changes his spectacles to suit the idiosyncrasy of each writer in turn.

The first question is to ascertain the personal law of the Malay community of these Districts.

### **Background of Comparative Law.**

In order to understand what has been written in the papers already and what is to follow it is, I think, absolutely necessary to acquire a clear idea of the different elements of the law which come into real or supposed conflict. Fortunately we have at hand a monograph which is at once clear, concise and authoritative. I therefore invite every reader of this opinion to pause here and to read, or re-read, the late Mr. Wilkinson's "Law—Introductory Sketch", one of the official "Papers on Malay Subjects" published by the F.M.S. Government. It occupies only some sixty pages of very large type but it provides the indispensable foundation of comparative law without which any intensive study would be built up on sand.

I would also invite reference to a very short essay (with illustrative cases) on Malay Family Law written by myself and published in this Journal in May 1937 (There is a copy in the Colonial Office Library). I do not, of course, invite comparison of my own work with Wilkinson's, still less do I claim that it is authoritative except in so far as it is based on the cases and precedents cited but I may perhaps be permitted to refer to my published writings if only to avoid repetition. I might remark here that one reason why my opinion was sought probably was that I have a qualification which very few others have ever had the opportunity to

acquire. I was for many years a District Officer and actually dealt with these distribution problems at first hand in both customary and non-customary districts. I have since become a member of the Colonial Legal Service and thus combine in my own person something of both sides in the controversy.

## HISTORICAL OUTLINE

### The Malay States Generally

As the reader will now have gathered, or reminded himself, from Wilkinson, Malay custom is of two kinds—*adat perpateh*, in the "customary" districts, which is tribal and *adat temenggong* in the other districts which is much the same as *adat perpateh* in so far as inheritance is concerned though the tribal organisation has disappeared. Mohammedan law is wholly different from both.

In Malaya, before the British period, the law of the Malays relating to property was, in Negri Sembilan, *adat perpateh* and in the other States, *adat perpateh* in decay, under monarchical influence (Wilkinson, p. 36). The monarchs were Mohammedans but their influence on the law was in the main political rather than religious. It is doubtful whether they introduced any more Mohammedan law into the northern States than was introduced in Negri Sembilan. They certainly did not adopt the Mohammedan law of succession. About 1886 the Perak State Council ordered the land of a major chief to be transmitted in the female line (Wilkinson, p. 37).

The main difference between Negri Sembilan and the other States was that the Negri Sembilan still retained their tribal political organisation and, with it, the tribal restrictions on disposal of land. The other States had lost their tribal organisation but the matriarchal law of succession to land survived. This was because the law relating to property is more conservative than the law relating to persons.

The Mohammedan law of marriage and divorce had been adopted to about the same extent in both regions. The extent was considerable but it was not complete and it still is not complete. The important feature of *mas kawin* was, and is, pre-Mohammedan *adat*. It is not the same as *mahr* (Wilkinson, p. 53).\*

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\* May I here remind both English and Malay officials that "dowry" means property settled on a bride by her own parents. *Mahr* means money paid to the bride herself by the bridegroom. *Mas kawin* originally meant money paid by the bridegroom to the bride's parents but, by confusion with *mahr*, is now paid (or more usually promised and left as an outstanding debt) to the bride herself, though by survival of a principle of *adat* the amount depends on the rank of the father, especially among chiefs.

At the commencement of the British period therefore the law of marriage and divorce was Mohammedan law with some omissions and with some retained features of *adat*; the law of property was wholly *adat* but it was not uniform over all the States.

So far as I know the question what was the personal law of the Malays at that time has never been examined.

Some of the early treaties contain expressions such as "Malay religion and custom" and "Mohammedan religion and custom" which shew that it was realised from the start that the Mohammedan religion was not the only matter to be considered. There is, be it noted, a difference between law and religion; a man may be a Mohammedan by religion without being subject purely and exclusively to the Mohammedan law. Someone therefore invented the phrase:—

"According to the Mohammedan law as varied by local custom".

This at least recognised the existence of the difficulty but it put the cart before the horse. It suggests that the Malays began as Mohammedans and later adopted variations to suit their local circumstances, whereas the historical fact is that in their pagan era they developed a body of customary law suitable to a community of agricultural peasants and later, following religious conversion, they adopted some of the Mohammedan law while retaining important parts of their customary law. Moreover the Mohammedan law became fixed within a century or so of the death of the Prophet, since when it has not been and cannot be "varied".

In my opinion the personal law of the Malays in 1875 was a combination of *adat* and Mohammedan law which would have been less inaccurately described by the expression:—

"according to ancient Malay custom as varied by the Mohammedan law, where the latter has been adopted".

What then is the personal law of the Malays at the present time? In my opinion it is still, as it was then, *adat* varied by the adoption of part of the Mohammedan law, but this is not say that the law has not changed. The *adat* may have developed and decayed and Mohammedan law may have been more extensively adopted and changes may also have been made by statute. I think all these things have, in fact, occurred.

It may be objected that the phrase I have devised is so vague and general as to be of little value and that I have not answered my own question—"What is the personal law now?" This is the crux of the problem.



The personal law has never been settled by statute and there are not enough decided cases to enable either a judge or a text writer to deduce an explicit rule by which to decide all the specific points of the law of inheritance which the District Officers are called upon to decide in the course of their daily work. This difficulty is not peculiar to Negri Sembilan but it arises there more frequently because the differences between Districts are more marked.

Where ownership of land rests on bare occupation without any kind of registration of title neither the executive nor the judiciary is often concerned with disputed succession to small holdings; they are probably more troubled with disputes as to boundaries. Where they give titles based on survey they settle the boundaries but it then becomes necessary to determine the succession on the death of every individual holder. On the death of the first Malay owner of registered land therefore leaving a widow, a son, a daughter, a father and a sister, they had to settle the succession among themselves (with or without the aid of some local elder) or else litigate the matter under the Land Enactment. The Collector knew that the parties were Mohammedans but he also knew that the Mohommedan law was treated as capable of variation by local custom. Disputes were rare and where a difficulty arose it was in practice often bridged by the local Kathi declaring a rule of *adat* to be a rule of Mohammedan law. In *Laton v. Ramah*, for instance, the Chief Kathi of Selangor, giving sworn evidence in the Supreme Court, stated that where a husband and wife acquire property and one of them dies, such property is divided equally between the survivor and the heirs of the deceased. He admitted that there was no mention of this rule either in the Koran or in any of the text writers on Mohammedan law. This case is fully reported in VI F.M.S. Rep. 116 and also in Malay Family Law at p. 37; similar declarations were made by the Kathis of six other districts in the cases reported on pages 15, 23, 27, 30, 49 and 60. It is clear from the Resolutions of the Perak State Council, *op. cit.* p. 70 and the Pahang Committee, p. 73, that this rule is a rule of Malay custom. It is in fact the rule *chari bahagi*, "earnings are divided" (Wilkinson, p. 31). The reference of questions of *adat* to the Kathis, however, naturally led to the gradual growth of the Mohammedon element in the personal law.

In view of the resolution of the Perak State Council recording the custom of the Malays in dividing up property on divorce, it is clearly impossible to maintain that the law of property of the Perak Malays was pure Mohammedan Law in 1907 and the judgment in *Laton v. Ramah*, giving the widow half of a substantial estate, shews that the law of Selangor was much the same in 1927.

Apart from these rights of widows and divorcees, however, I do not think very much of the ancient law of property survives in the northern States. A distribution such as that in Long Jaffar's case (Wilkinson, p. 37) might or might not be made in the family of a Chief but if so it would be a special case. It is true that among country people many estates are still divided according to *adat kampong*, but that is by consent. The Mohammedan fractions have been applied so frequently by Collectors and by the Courts that whatever the law was in 1907 I think the law of inheritance, except as to the special rights of spouses, is now the Mohammedan law. It does not necessarily follow, however, that the law *e.g.* of guardianship is the Mohammedan law. The Supreme Court has appointed so many women to be representatives and guardians that there is clearly a considerable non-Mohammedan element in those branches of the personal law. In my opinion, however, the minutes of the Perak Council and the Pahang Committee, already cited, and the cases which are collected in my "Malay Family Law" do establish the following general proposition:—

The personal law of the Malays of Perak, Selangor and Pahang is a mixture of Malay Custom and Mohammedan law,

and the following particular rules:

- (a) On divorce the wife of a peasant is entitled to a share in land acquired during the marriage, the share varying from one half downwards according to circumstances.
- (b) On the death of a peasant his widow is entitled to a special share in his estate, unless provision has been made for her, *inter vivos*, by registering land in her name. If the deceased had no children and the estate is small she may take the whole. In other cases she takes a half or less according to circumstances.
- (c) The residue of the estate is distributable according to the Mohammedan law of succession (but inasmuch as the widow's special share is discretionary, her one-eighth or one-quarter can and should be taken into consideration in assessing the special share).

### Negri Sembilan

The history of the matter in Negri Sembilan is somewhat different. There it was recognised from the earliest days that the law of inheritance was *adat*.

In the first place the country was more completely settled. The population of the irrigable valleys with their fringes of *kampong* was already nearly as dense as the land could support. The



ridges separating the valleys were under jungle and there was very little land left which was suitable for cultivation with any crop known to the Malays at that time. The main task of the Land Officers was to bring the existing holdings on to the mukim register. There was very little alienation of new land to small holders.

The relevant Enactments of Negri Sembilan were then exactly the same as those of the other States. They provided a procedure by which the Collectors transmitted the land of a deceased holder to his or her heirs but there was no statute which decided, or even assisted in deciding, what the substantive law of inheritance was. In fact *adat* was applied because, whether the Collectors realised it or not, it was the personal law of the family. The *adat* did not attach to the land. If a Malay sold land to a Chinese, whether in Perak or in Negri Sembilan, then when the Chinese died the Collector had to find out what the Chinese law of succession was and transmit the land accordingly.

There was, however, this important difference between the personal law of Negri Sembilan and that of the other States. A tribal holder could not sell her land to any person, of any race, without first offering it to her own family and tribe, whereas a Malay who was not a member of a tribe could sell at will. This was the case both before and after the establishment of the mukim register; the register made no difference to the substantive law but it altered the procedure. Where there is no documentary title a sale is evidenced by "beating the bounds" in the presence of friends, neighbours and village headmen; consequently a holder could never, in those days, make a secret conveyance in violation of the tribal custom. A registered title, however, enabled the holder to make a secret but indefeasible conveyance in favour of a purchaser. In theory therefore the mukim register undermined the tribal option. In practice, however, it did not do so for two reasons. Virtually the whole population of the tribal districts was tribal and therefore any potential purchaser was aware of the custom.\* Tribal feeling and the influence of the *lembagas* was sufficient to maintain and enforce the custom without any statutory safeguards.

It is important to remember that this did in fact continue for many years and in Jelebu still continues.

Towards 1909, however, rubber planting spread to small holders; land became more valuable and saleable on a wider market. Planters were extending their estates and sometimes wanted to purchase strips of *kampong* or even *sawah* for purposes of consolidation. This gave rise to two dangers. A holder might be tempted to sell without granting the tribal option and, if land was

\* For a remarkable instance prior to 1909 see *Bujuk v Tiamah*, (Customary Law of Rembau, p. 183).

sold to other races, the Malay peasantry would tend to become expropriated and permanently deprived of their means of existence. It was in these circumstances that the Customary Tenure Enactment of 1909 was passed. Its express object, as appears from the preamble, was to prevent registration of title from "impeding due observance of the custom". The motive of the legislature, however, was to make use of the custom as a means of carrying out the policy which was, three years later, embodied in the federal Malay Reservations Enactment.

### Legislative Changes

The Enactment of 1909 provided no more than this—that the District Officer should inscribe the words "Customary land" on those entries in the mukim registers which related to land "occupied subject to the custom". The sole effect of this was to place a restriction on dealings. Such land could not be sold or charged unless the holder and the *lembaga* (the headman of the tribe) attended in person before the District Officer and satisfied him that the tribal options had been given. (These are fully stated in "Customary Law of Rembau" at p. 33). In case of any dispute the District Officer held an enquiry and his decision was appealable to the Resident. There was no explicit substantive law in that Enactment. It did not require that all titles held by members of tribes should be inscribed or even that all ancestral titles should be inscribed. It was mainly an enabling statute giving the District Officer a discretionary power to enter what was in effect a caveat to protect the tribal entail. It is comparable to the power of any District Officer to enter a caveat to protect the interests of an infant.

In fact this provision of the Enactment was never systematically applied. It imposed no duty on the District Officers to make any general enquiry or to inscribe any particular class of titles. It merely empowered them to inscribe titles as and when occasion required. Hundreds of titles for indisputably ancestral lands remained uninscribed and large numbers were still uninscribed, especially in Johol, as late as 1929. (Letter No. 8 in N.S. 1179/29). It was because they were indisputably ancestral that they remained uninscribed. It is extremely rare for a holder to seek to sell such land without giving the proper options because the people themselves attach great importance to them and in the eyes of their fellow villagers it is actual fraud to try to defeat them. As all applications for succession to a deceased holder were heard by the District Officer, whether the titles were inscribed or not, such titles could be, and very often were, transmitted to the next generation according to ancestral rules without the District Officer troubling to add the inscription.

It is of the first importance to realise that the Customary Tenure Enactment of 1909 did not affect questions of inheritance in any way. The position was shortly as follows:—

On the death of a holder, all the land, whether the titles were inscribed "customary land" or not, was distributed by the District Officer under section 37A of the Land Enactment, (II Voules 88) at one enquiry and appeal lay to the Commissioner of Lands. The only difference was that if an appeal related to "customary land" (in the narrow sense of land the title to which had been so inscribed) the local Major Chief sat with the Commissioner to hear the appeal. If an appeal raised separate issues, one relating to an inscribed title and one to an uninscribed title, the two issues were heard separately but on the same day and on the same notice of appeal. It was all one case. The Enactments only provided procedure. They were framed on the principle that the District officers would either know the custom or be able to ascertain it by taking evidence. It was well known that customary property was divided into two main classes, ancestral and acquired, and that the rules of inheritance were different, though both classes descended according to the custom, see Parr and Mackray, pages 69 and 75. Only ancestral land was subject to restrictions on transfer. The intention of the Enactment was that ancestral titles should be inscribed but that acquired titles should not. But this is not apparent from the Enactment itself. The main difficulty arises from the use of the word "customary" which is ambiguous. The Enactment should have required the titles to be inscribed "Ancestral land".

In 1928 the Land Enactment was replaced by the Land Code; section 37A was abolished and replaced by a new "Small Estates" Chapter of the Probate and Administration Enactment (E.5. 1926). At about the same time the Customary Tenure Enactment of 1909 was replaced by the one of 1926. The provisions relating to restriction on dealings were retained with little alteration. The main changes were the insertion of a section empowering the District Officer to transmit the land of a deceased holder to the customary heirs, with a right of appeal to the Resident and Chief, and the insertion of the highly artificial definition of "Customary Land" as land the title to which had been so inscribed.

In substance it amounted merely to this—that section 37A of the Land Enactment was retained for succession to "Customary land" while other land was dealt with by the same District Officer but under the Small Estates law, and subject to appeal to the Supreme Court. The effect of this is that whenever a person dies leaving both ancestral and acquired property, which very frequently occurs, there must be two separate enquiries with two separate sets of notices and the possibility of two separate appeals. Further, and this is one of the main difficulties, if, as in fact often happens,

a title which is really ancestral has not been inscribed, the land will be entered by the clerk who prepares the notices as part of a "small estate" thus putting it in the wrong jurisdiction.

### **Effects of the Legislation of 1926**

#### **Multiplicity of Proceedings**

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When a case comes on for hearing under the Small Estates procedure one of three things may happen.

A. There may be no dispute as to the succession. In that case the District Officer may merely transmit the land to the customary heirs, which he is expressly empowered to do by section 184, leaving the titles uninscribed; this involves carrying the difficulty forward to the next generation.

Alternatively he may inscribe the titles and require the applicants to begin again under the Customary Tenure Enactment; this involves delay and expense to the parties and a lot of extra work to the Land Office and is very undesirable, especially in an undisputed case. There is a solution, namely to transmit the land under the Small Estates law and afterwards inscribe the titles. This, however, is on its face paradoxical. There is nothing in any Enactment to suggest it and though it is legal I do not think it could be made the practice without an amendment or statutory rule. An experienced District Officer might do it occasionally.

B. There may be a dispute as to the succession to the ancestral land.

In that case the only safe course is to inscribe the titles and start afresh because the appeal is to the Resident and Chief.

C. The dispute may be as to whether the uninscribed title is really ancestral property.

In that case the District Officer must adjourn the whole matter. He cannot go on with the other land and make his order as to that only because, if the disputed land is not ancestral, he would have distributed only part of the estate. He must therefore start a separate enquiry as to whether the disputed land is or is not ancestral. He cannot do so then and there because the proper notices have not been published, and he may not have all parties before him. His order on the second enquiry is appealable to the Resident and Chief. If it is finally decided that the land is ancestral the titles will be inscribed and the matter remitted to

the District Officer to distribute the property according to ancestral rules. This involves further notices and a further hearing and there is a possibility of a further appeal to the Resident and Chief. After all that, the District Officer must resume his first enquiry and transmit the acquired property subject to a separate appeal to the Court.

If, however it is decided that the land is not ancestral, the original enquiry is resumed and the whole of the estate of the deceased distributed.

It is, I think, obvious that the difficulties arise out of the duplication of proceedings and that the solution is to make all the property of any one deceased the subject of one enquiry followed, if necessary, by one final appeal. That is true in theory but there are practical difficulties.

It may be said at once that although the tangle of applications described above does not arise frequently, it does arise often enough to be a real difficulty and an actual instance is the foundation of the problem which has been referred to me (Re Haji Pais, dec., at p. 57 *infra*) and another one led to the appeal to the Court in Hussin v Maheran (p. 110 *infra*).

It may be asked how there can be any real doubt as to whether a given piece of land is ancestral. The doubt usually arises in one of two ways, but there are other cases. The first is the technical one described above, that is, the land really is ancestral but the title has not been inscribed and any Judge or other officer not familiar with the intricacies of local custom, naturally looks at the Enactment and says "Since it is not so registered it clearly is not 'customary land' within the statute, so how can it devolve according to the custom?". This leads to a deadlock and conflicting decisions.

The second arises on facts. If a holder leaves one piece of inherited land, derived from an ancient title, and one of which she was the first grantee, it is obvious that the former is ancestral and the latter acquired. But suppose she left a third piece acquired by her mother? When does acquired land become ancestral?

Further, and this question arises in almost every case, assuming that the land is not ancestral, how does it devolve? The descent of admittedly ancestral land is seldom disputed.

The main problem is really a combination of these four questions:—

(a) Does acquired land become ancestral?



- (b) If so, is it on descent to the children of the first acquirer or to the grandchildren or when?
- (c) If not, what are the rules of distribution of inherited acquired land?
- (d) In any case, what are the rules of devolution of land acquired by the deceased in question?

This is not exhaustive. There is for instance the question of admittedly ancestral land which has been sold after due notice, the tribal option not having been exercised. On the death of the purchaser, does it devolve as ancestral land or how?

## DEVELOPMENT OF THE PROBLEM

### Conflicting Decisions of 1927-29

I will now go briefly through the two papers submitted to show what the present position is and how it has arisen.

It is necessary to refer, at this point, to a judgment by Mr. A. Caldecott (as he then was) who officiated as Commissioner of Lands during part of 1927 and, in that capacity, decided an appeal from the decision of the District Officer, Kuala Pilah, in a succession case.

This judgment is referred to several times but there is no copy of it in the papers.

It appears that the deceased in question left land which was not registered as "Customary land" and that the father of the deceased claimed a share on the basis of Mohammedan law while other relatives claimed that the land devolved on them according to *adat*.

The Commissioner held that by "embodying the custom in a special enactment, the legislature had outlawed the custom as the common law of the State or any part of it". He accordingly ordered the land to be registered in fractional interests corresponding to the Mohammedan rules of division, the father inheriting one-sixth.

Now, the Land Code of 1926 did not come into operation until 1928, so the position in 1927 was that the Customary Tenure Enactment of 1926 was in operation in conjunction with the Land Enactment of 1911 and the Commissioner was proceeding under section 37A of the latter.

As a matter of legal interpretation his decision was plainly wrong, as appears from the judgment of Cussen, J., page 99 *infra*. The Customary Tenure Enactment does not embody the custom. It does not contain any rules of devolution; indeed, it contains scarcely any provisions of substantive law. It consists almost entirely of procedure by which the custom was to be observed. The most that can be inferred from it is that land subject to that enactment is to devolve according to the tribal custom. There is nothing to justify the inference that property not affected by that Enactment is to devolve in any particular way. This judgment is therefore in direct conflict with what really was the policy of the legislature as explained in the minute by Mr Wolff, (page 89 *infra*) who was the Resident mainly responsible for carrying that Enactment through the State Council.

The Commissioner, of course, was one of those in whose minds the law of succession was "annexed to the land"; he strenuously denied the doctrine of the personal law. Also, like some others, he assumed rather than decided that the property of a Mohammedan devolves according to the table of fractions which is by no means generally true, (pages 45, 49 *supra*).

N.S. 1179/29 begins with a letter about Civil Appeal No. 27 of 1928 but the case actually discussed is Appeal No. 21 of 1928, the history of which was as follows.

### Re Haji Pais, dec.

(*Kuala Pilah Distribution Suit No. 32 of 1928*).

The deceased left about 9 acres of land, of which some 4 acres was acquired during his first marriage and 5 during his second marriage. The first wife died before him leaving one daughter of that marriage. The second wife had one daughter, aged 6. The nearest female relative on the mother's side, a cousin, attended the hearing but made no claim; she said the deceased had also a brother who lived in Jelebu; he had not been served with a notice and was not present.

The widow claimed one-third of the estate for herself and one-third for her daughter; she conceded the remaining third to the other daughter.

The step-daughter claimed the whole estate.

The chief of the step-daughter's tribe said:—

"She has no right to claim the whole estate; she ought to have the land acquired during her mother's life and the widow and her child should have the rest."



The widow objected to this suggestion because the land acquired during the first marriage was under old rubber and valuable, whereas the land acquired during her marriage, though of greater area, was under young rubber and less valuable (probably not yet tappable); also, she had spent money on the older land and she and the deceased had jointly cultivated it.

The trial Collector (Mr. G. H. Nash, M.C.S.) gave judgment as follows:—

“I find that it is irrelevant in whose lifetime the land was acquired. Even if it was acquired in one wife’s time it was cultivated in the next one’s.

The titles are not marked “Customary land” and we do not admit evidence of the custom (which is invariably different in each version by the ‘experts’) in lands which follow Moham-medan law. The land should be divided according to Moham-medan law among all beneficiaries; Kathi to say whether brother (not served) is entitled to a share and to say what share each of the three (or possibly four) beneficiaries should have. To 30.6.28 for report of Kathi.”

The nine acres were comprised in two titles and a half share in a third. After consulting the Kathi he ordered that each title be registered as follows:—

Widow	.. .. .	3/12
„ as trustee for infant daughter	..	4/12
daughter of first marriage	.. .. .	4/12
brother	.. .. .	1/12

Valuation \$2,550.

[*Note.* This means that one or other of them had to pay \$25.50 for estate duty but the Collector omitted his statutory duty to say which of them should pay.]

### Commentary.

Now, leaving aside all questions of law or theory, could any decision be more unreasonable from a common sense point of view? The widow and her step-daughter were clearly disputants. What was the good of giving each of them an undivided share in all three pieces? Why not give the step-daughter whichever piece was roughly one-third of the estate in value?

The brother lived in another district and made no claim. Why give him a 1/24 share in one piece and a 1/12 in two others. What is the purpose of complicating all the titles? What will happen when he dies?

Turning to the evidence, since the chief of the step-daughter's tribe was definitely against her claim to the whole estate he was entitled to some respect. His suggestion was clearly an application of the very sensible rule that property acquired during each marriage descends to the children of that marriage.

The widow's claim on the basis of cultivation by her was valid, compare *Ramah v. Alpha*, (IV F.M.S. Rep. 179; Malay Family Law, 22). The District Officer was therefore wrong in holding that the question was irrelevant.

Then he says that evidence of custom is inadmissible "in lands which follow Mohammedan law". This question requires separate examination. It may have been an allusion to the decision of the Commissioner of Lands in *Kuala Pilah Land Case 14/27* (p. 56). But in this case no claim was made under, or even consistently with, Mohammedan law.

The short facts are that Mr. Nash had previously been stationed in other States and was accustomed to distribute property on the Kathi's certificate. Like every other newcomer he found it difficult to obtain any clear statement of *adat* on which to found a decision and he probably said to himself "Anyway this is not 'customary' land. It is better to apply the Mohammedan law which at least is definite.". It is obvious that he never applied his mind to analyse the case.

I knew Mr. Nash and sat with him at several meetings of a committee which was formed by the Resident (Mr. Wolff) about the end of 1927 to consider substantially the same question as is raised in this correspondence. He stated frankly that when he came to Kuala Pilah he thought the *adat* was nearly dead but that when he came to give attention to the question he found that the Kuala Pilah people had a definite tribal life. He adhered, nevertheless, to the doctrine that "the custom attached to the land".

The step-daughter appealed to the Judge.

She claimed the whole of the piece of land acquired during the marriage of her mother and the deceased. She abandoned her claim to the other two lots as they were acquired during the second marriage and accordingly devolved on the widow and the child of that marriage. Thus, on the appeal the step-daughter adopted the submission of her Chief at the trial.

The Judge remitted the case to the Collector to take evidence as to whether the land was or was not occupied subject to the custom and whether the titles should be inscribed accordingly with the words "Customary land".

The further evidence was taken by the succeeding District Officer, who had then no previous experience in Negri Sembilan. Two minor chiefs, both of the step-daughter's (*i.e.*, the first wife's) tribe were called. The evidence of the first was recorded as follows:—

"The land claimed by the step-daughter was opened up by her father and mother. The date of the application is 1913 and the land is not immemorial land. It cannot be described as *pesaka nenek moyang* (inheritance from time immemorial) but *pesaka shara* or inheritance under Mohammedan law."

[Note. "nenek-moyang" literally means great-grandmothers and great-great-grandmothers. E.N.T.]

The second chief's evidence was recorded thus:—

"The land is not *pesaka nenek-moyang*. The land, though not ancient, is fairly old, so I suppose it might be called a sort of *pesaka* and yet it is not *pesaka* according to the Customary Lands Enactment".

The District Officer made the following note of his opinion:—

"The difficulty here is to decide what is meant by the Custom. In the districts of Kuala Pilah, Tampin and Jelebu, lands which are described as 'Customary lands' and which are so marked on the titles are regulated by a special Enactment, the 'Customary Lands Enactment, 1926'. It has been held\* that the effect of this Enactment was to restrict the operation of the *adat perpateh* to titles which have been so endorsed under the Enactment and that where this does not apply, the law of the Malays is the Mohammedan Law. It has always been the habit here to follow any local custom where both parties were agreed and wanted to follow such custom but this is a mere concession to the parties' desires.

I am of opinion that at any rate as far as Kuala Pilah is concerned, only those lands which are definitely endorsed as Customary Lands under the Customary Tenure Enactment follow the custom as of right—all others must follow the the Mohammedan law."

As the decision of the Judge is important it is reproduced in full.

\* This refers to the case mentioned on p. 56 *supra*.

**Judgment on Appeal.**

(*Negri Sembilan Civil Appeal No. 21 of 1928*).

BURTON, J.—Haji Pais bin Ujang died at Ulu Parit in the district of Kuala Pilah possessed of three pieces of land, E.M.R. 1727, E.M.R. 1307 (a half-share) and Approved Application No. 937/26 in the Mukim of Terachi. His widow Ejah, the respondent, applied to the Collector of Land Revenue, Kuala Pilah, for a distribution order under section 179 of the Probate and Administration Enactment 1920. Darah binti Haji Pais, the daughter of the deceased by a previous wife, objected to the claim of the widow and after hearing evidence the Collector decided that as the titles were not endorsed "Customary land" under the Negri Sembilan Customary Tenure Enactment 1926, the estate was divisible according to Mohammedan Law and made a distribution order accordingly. E.M.R. 1729 which Darah claims by virtue of the *adat perpateh* was acquired by Haji Pais during the lifetime of Darah's mother. Darah does not claim any interest in the other two pieces of land as they were acquired by Haji Pais during the lifetime of Ejah and according to the custom should go to her and her children. Darah appealed from the order of the Collector and the appeal raises a large question as to the nature and extent of the *adat perpateh* in Negri Sembilan. It is in dispute in this case whether or not part of the property of a deceased person may be subject to the custom while the rest descends according to Mohammedan law.

The evidence taken at the original hearing was very meagre but what there was, was in favour of the appellant. The Datoh Sri Amar Raja Wahab, a minor Chief of Terachi, said:

"The deceased acquired about 4 acres of this property (*sc*: E.M.R. 1729) while he was married to Darah's mother. The other five acres he acquired during marriage with the petitioner Ejah. The objector (Darah) ought to have the two pieces of land acquired during her mother's life and the petitioner and her child should have the rest."

The Collector ignored this evidence and made his order on the ground that the land was not endorsed under the Customary Tenure Enactment and ordered that the land be divided according to Mohammedan law.

On the first hearing of the appeal I remitted the case to the Collector to take evidence and find whether this land was or was not subject to the custom and whether the register ought to be endorsed. The evidence taken on the second hearing by the Collector is not helpful. Asul, the Datoh Amar Penghulu of the Sri

Lemak Pahang Tribe, who would appear to be less of an authority than the Datoh Sri Amar Raja said:

"The land in question was opened up by the father of Darah and Darah's mother. The land is not immemorial land. The land cannot be described as *pesaka nenek moyang* (i.e. land which has descended from ancestors) but *pesaka shara* (i.e. land subject to Mohammedan laws of descent)."

It appears to me that the mind of this witness, and (I infer) the mind of the Collector who was no doubt questioning him, was not directed to the right issue, which is not at all whether the land has been immemorially subject to the custom.

The Datoh Sri Amar Raja was recalled and said:

"The land is not *pesaka nenek moyang*; the land, though not ancient, is fairly old and so I suppose it might be called a sort of *pesaka* and yet it is not *pesaku* according to the Customary Lands Enactment."

It would appear here that the witness is giving his evidence in answer to questions presupposing that it is necessary for the land to have been immemorially subject to the custom and I do not for one moment suppose that the last twelve words of his evidence are a literal transcript of what he said.

It seems to me that all the evidence taken at the re-hearing is subject to this flaw that the Collector's mind was directed to the examination of the question whether the land had been immemorially subject to the custom. I do not think this is a correct view and I think that as all the new evidence is tainted with this error, it is very much inferior in probative value to the evidence given by the Datoh Sri Amar Raja at the original hearing. As far as the oral evidence goes then, I think it is in favour of the appellant.

But Mr. Jeff did not confine his argument to that; he sought to support it with authority. The authorities however are very scanty. The chief and principal authorities are the Customary Tenure Enactments, the first in 1909 which was replaced in 1926.

The preamble of the 1909 Enactment is—

"Whereas certain lands in the administrative districts of Kuala Pilah and Tampin have been and are lawfully occupied by the members of certain tribes...in accordance with their tribal custom.....And whereas it is expedient that

particulars of the said lands be entered in the mukim registers of the said districts...but so that nothing in such entries shall impede the due observance of the custom...."

The legislature labels the *adat perpateh* a tribal custom and it is clear that it intends the custom to be paramount to the land register. It reinforces the position in sub-section (ii) of section 1 of the Enactment:—

"But so that nothing in that Enactment (*sc*: the Land Enactment) shall be deemed to prevail against the provisions hereof."

The 1926 Enactment naturally does not repeat the preamble but it repeats sub-section (ii) of section 1 of the 1909 Enactment. This I think disposes of the position of the Collector that the operation of the *adat perpateh* should be confined to titles which have been endorsed.

The position of the Collector that only land immemorially subject to the custom is customary land is I think also incorrect. It is in the first place contrary to the evidence of the Datoh Sri Amar Raja who is the "Kepala Waris" of the Sri Lemak tribe. On this point the Enactments are helpful. Section 2(i) of the 1909 Enactment seems to me to indicate that the Collector's view is incorrect, for if the custom was limited to land immemorially subject to it, the legislature would hardly have used words—

"In the case of any land particulars of which....may hereafter be entered in any of the mukim registers....."

I do not think this is necessarily conclusive because the legislature may have contemplated the bringing of old forms of title on to the mukim register; but the argument gains considerable weight from the repetition of this section in the 1926 Enactment when obsolete forms of title must have been very few.

Sub-section (ii) of section 4 of the 1926 Enactment seems however to be conclusive on this point for it contemplates and provides for the alienation of State Land to the tribe. This section was added to the 1909 Enactment in 1919.

I think also the Collector has taken up a wrong attitude in assuming that the custom is in any way attached to the land. The *adat* is a personal custom and affects the land by virtue of its ownership by persons subject to the custom. By section 4 of the Enactment of 1909 land could, after certain formalities, be transferred to persons not subject to the custom and the land is then enfranchised from the custom, see section 7 of the 1909 Enactment. These provisions are not repeated in the 1926 Enactment.



The position would seem to be that before 1926 customary land could be enfranchised from the custom and transferred to persons not subject to the custom. This position was altered in 1926. By the 1926 Enactment, though the land can be transferred from one tribe to another, it cannot be transferred to strangers. This change in the law cannot to my mind imply a sudden change in the custom but is rather referable to the policy of the legislature to prevent expropriation of tribal lands.

I do not think there is anything in the 1926 Enactment to contradict this view. But that Enactment must be read on the assumption that the draftsmen had it strongly in his mind that he was only legislating for land.

If then the custom is personal and attaches to the person it follows that there is no place for inheritance according to Mohammedan law. It is not possible with a personal custom that certain property descend according to the custom and some according to Mohammedan law.

This view of the law is supported by Parr & Mackray's book on Rembau. I do not know how far this book is an authority but it is frequently quoted in the Courts of this country. The authors divide "heritable property" into

- (I) Ancestral property (*harta pesaka*) and
- (II) Acquired property (*harta charian*).

As to the *harta pesaka* there is no dispute. This corresponds to the property the Collector refers to as immemorially held. The evidence is that E.M.R. 1729 is property acquired during wedlock, *harta charian laki-bini*, as it was acquired during the marriage of deceased with Darah's mother; and on p. 75 the authors say—

"Property acquired during wedlock, the joint earnings of man and wife, on the death of the husband... vests in the widow for the benefit of the female issue. When that acquired property has once passed into the possession of the children, it ranks, thence-forward, as ancestral and becomes subject to the rules governing the tenure of ancestral property."

It must however be remembered that this book deals with Rembau, and that it does not follow that the custom is precisely the same in Kuala Pilah. An important difference on such a fundamental point would, however, be extremely unlikely. It is also stated that movable property as well as immovable descends according to the custom (p. 65) and this is strongly supported by the admis-



sion of the respondent at the hearing, who stated in answer to a question by me:—

“A bicycle belonging to a man would go to the wife and to the customary heirs”.

It is necessary also to consider the case In the Estate of Kulup Kidal (Unreported, N.S. Petition No. 106/26; since reported, see foot-note). In this case the deceased was a tribal chief who died on 23rd November 1926 possessed of one piece of customary land, E.M.R. 639 Batu Hampar, and some movable property. He left a will which recited that he was a Lembaga of the Mungkal tribe and by it he directed that his property should be divided into three parts, one to go to his wife, one to his niece, and one to his nephew, Mohamed Nor, whom he also appointed executor. Acton, J. at the hearing of the petition held that the will was properly executed but was made by a tribal chief contrary to the custom; that the will was inoperative and that the deceased's property must be distributed according to the custom. He refused the Grant of Probate. There was no reasoned judgment\* and it is not easy to make any clear inference from the file. But the will devised “all the properties left by me” (*hartu meninggalkan sahaya*) and so must have included the movable property and the finding of Acton, J. was that it was wholly contrary to the custom. This case as an authority seems therefore to support the same view.

The case of In re Tiambi binti Ma'amin (Innes, p. 285 Customary Law of Rembau, p. 57) is also of some importance for the proposition that the debts of male relatives of women subject to the *adat* follow the land, which again supports the general proposition.

I come to the conclusion therefore that the Collector was wrong in holding that only lands immemorially subject to the custom can be affected by it; in holding that it only applies to land so endorsed in the Register, and in holding that when a person subject to the custom dies, there can be a residuum of his estate which descends according to Mohammedan law.

The Collector was therefore wrong under section 176 of the Probate and Administration Enactment in assuming jurisdiction in this case and I must set aside his order leaving the parties to make a new application under the Customary Tenure Enactment 1926.

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\* The report in The Customary Law of Rembau, at page 92. was revised by Acton, J. personally and makes the point clear.

**Commentary.**

With all respect to the learned Judge I must say that his last paragraph is mistaken.

This case arose in 1928. Under the Customary Tenure Enactment of 1926 the jurisdiction to distribute the estate of a deceased depends on the wholly artificial test whether the title has been inscribed. On no view of the meaning of "ancestral" could it possibly have been right to inscribe these titles during the lifetime of the deceased in question who was the first acquirer. The decision really amounts to this—that if the deceased was a member of a tribe, on notice of his death the titles should forthwith be inscribed and the transmission proceedings would then be under the Customary Tenure Enactment, with appeal to the Resident and Chief. This would effectively prevent any question of tribal inheritance of land from coming before the Supreme Court but it would make all acquired land subject to restrictions on transfer which would not be accepted as a matter of *adat* and would in any event be unworkable because the Enactment does not allow inheritance by males. Also it would leave the question of movable property and, more important, of charges of land, to be the subject of separate and very difficult proceedings. Even if the main part of the judgment is a correct exposition of the principles of the custom (which has been doubted) it must be admitted that the actual order is unworkable.

**The Discussion leading to the Amendment of 1930.**

The District Officer, Kuala Pilah, then sent a long letter (No. 5 in N.S. 1179/29) to the Resident. He pointed out that the Judge did not expressly mention section 184 (iii) of the "Small Estates" chapter of the Probate and Administration Enactment which provides that in the absence of agreement among the beneficiaries the estate shall be distributed according to the law and custom having the force of law applicable to the deceased.

He also drew attention to Section 176 which provides that the Small Estates procedure shall not apply to Negri Sembilan Customary land. The term "Customary land" is defined in the Customary Tenure Enactment as land with a title so inscribed. In the Probate Enactment the term is not defined at all.

I know as a fact that the intention of the draftsman was that the definition should be "read into" the Probate Enactment but he did not carry this out. He should have said:—"The Small Estates procedure shall not apply to customary land as defined in the Customary Tenure Enactment". Although he did not do so some of the Collectors held that the effect is to authorise them

to transmit uninscribed titles under the Small Estates procedure but according to Negri Sembilan custom. That view would have been workable but for the doctrine of Mr. Caldecott (page 56 *supra*) that unless the title were inscribed, the Negri Sembilan custom was wholly excluded. These different interpretations have made even the law of procedure wholly uncertain. The District Officer accordingly recommended that the law should be amended to make the procedure clear and certain and he asked for advice as to how to carry out the final paragraph of the judgment of Burton, J. set out above. His difficulty was this. The Judge had decided that the titles ought to be inscribed but if he inscribed them the opposite party would appeal to the Resident. The District Officer had strong grounds for expecting the Resident to decide that the titles ought not to be inscribed. Thus there would be a complete deadlock.

The District Officer also stated that some of the lembagas were of opinion that such property devolves according to Mohammedan law. I will discuss this in connection with a later and fuller letter on the same subject (p. 71).

The Resident (Mr. Simmons) wrote to the Chief Secretary stating shortly the decision of Burton J. that the *adat* is a personal law "from which apparently the members of the tribes can never emancipate themselves" whereas successive District Officers of Kuala Pilah had found that acquired land devolved according to Mohammedan law. He explained the resulting deadlock and recommended amending the law so as to provide:—

That all questions of Negri Sembilan Custom should be removed from the purview of the Courts and decided by the District Officer, subject to appeal to the Resident and Chief. "If they decide that land is "customary", (he wrote) devolution will follow according to the *adat*. If it is not "customary" devolution will follow according to the Probate and Administration Enactment".

Here the Resident was confusing substantive law with procedure. The Probate Enactment merely brings the question before the District Officer for decision. It does not indicate how he is to distribute the property. The only substantive provision is section 184 (iii) which requires distribution according to the custom applicable to the deceased.

The Chief Secretary referred for advice to Dr. R. O. Winstedt, (now Sir Richard Winstedt, D.Litt.) a former District Officer of Kuala Pilah, who contributed the following memorandum.

## Memorandum by Dr. Winstedt.

23 Sept. 1929

"The British Resident states that in the Kuala Pilah district "new land is not customary; no new land can ever come on to the register and that devolution of all land except that already marked "customary" is by *hukum shara'* and not by *adat*".

So far as my memory serves that was not by any means the case in my time. A person could elect whether or not he or she wished new land to be marked 'customary'. My memory, therefore, goes some way to support Mr. Justice Burton's finding.

In my time the Court party of Sri Menanti was always striving for the introduction of *shara'* in Kuala Pilah; the tribes were against it. I should therefore be interested to know who were the 23 chiefs and lembagas who in 1928 declared new land, *harta charian*, not to be subject to the *adat*, who convened them and where and why? There are more than 60 chiefs and lembagas in the Kuala Pilah district. The Dato Sri Amar Raja, Wahab, of Terachi who gave evidence before Mr. Justice Burton (page 61 *supra*) cannot have been one of them! In 1926 a lembaga of the Mungkal tribe (*ibid*, p. 65) held these heretic views and on appeal (1926) the Supreme Court held—rightly to my mind—that his views were not in accordance with the custom.

Kuala Pilah Malays must have changed entirely since my day if they now regard the custom as "a relic of bye-gone times". Sri Menanti has always so regarded it.

Could not the District Officer, Kuala Pilah, put up a *precis* of land cases for the last 10 years on the lines of Mr. Taylor's recent and most valuable work on Rembau (Malayan Branch, Royal Asiatic Society's Journal, August 1929)? Any one with the Kuala Pilah land case book in his hands could determine the present position. Could not Mr. Taylor be sent there for a month to study it?

In my time I did all I could to preserve *adat*, tiresome as it was, because, with no Malay Reservations Enactment, it was the only way to keep the Malay from selling his land to foreigners, Indians and Chinese. The conditions now may be different.

I concur, however, with the Resident that it would be an excellent step to remove all question of Negri Sembilan custom from courts, whose judges can seldom have any knowledge of it, and hand over all jurisdiction to the District Officers, Residents and State Council. Lawyers, however, will probably object. And if one party claims that the land is *not* held under customary

tenure, it makes it difficult to withdraw the decision on that point from the courts.

(*F.S.G. 2065/29; N.S. 1179/29*).

The Chief Secretary then recorded his view as follows:—

**Memorandum by Sir William Peel.**

26 Sept. 1929

The two main questions appear to be:—

(a) whether all questions of "customary" tenure should be removed from the courts and handed over to the jurisdiction of the District Officers, the Resident and the State Council;

(b) what principles should guide the District Officers, the Resident and the State Council in determining what lands should be deemed to be "customary".

As regards (a), I am not sure whether this will be easy. If the above authorities decide that a piece of land is not "customary", application might be made to the courts for distribution under the Probate and Administration Enactment. If such application were opposed on the ground that the land is "customary" I do not know whether the court would be able to avoid the issue. Possibly statutory provision could be made that the opinion of the State Council on such a point could not be challenged by the courts.

As regards (b), the Resident appears to hold that new land cannot be "customary" and "that no new customary land can ever come on to the register". This view seems to be inconsistent with Section 4 (ii) of the Customary Tenure Enactment of 1926 which provides that, in the case of land newly alienated to female members of the tribes, it *can* be entered in the register and marked "customary".

I am inclined to think, in view of this section, that a similar course should be open in the case of new non-customary land, not held under grant but under the mukim register, being acquired. I do not see why the purchaser should not have the right to have it entered in the register as "customary" land if he or she so wishes.

There seems to be some difficulty in a case where, as in that which formed the subject of the appeal recorded herein, the husband purchases land in which it may be held that his wife has some share or interest. In such cases it would appear desirable that the District Officer should have powers similar to those suggested by the Resident in his amending Section 4 (ii) to enquire into the

case and decide whether or not the land should be recorded as "customary", having regard to the wishes of the parties.

This perhaps should be further considered by a more representative body of chiefs and lembagas than that which held the meeting referred to on p. 67 *supra*. If, as Dr. Winstedt points out, there are over sixty of such chiefs and lembagas in Kuala Pilah district, every effort should be made to get them all to attend.

It would probably be interesting, as Dr. Winstedt suggests, to get a *precis* of land cases put up for the last ten years showing the lines on which the matter has been proceeding.

The evidence seems to show that there is a distinct desire on the part of many of the Kuala Pilah people to get away from "customary" tenure as far as possible, so as to make the disposal of land more elastic. It would also appear that Sri Menanti has had a distinct influence in the matter. Outside influences and the opinions of a few—if it is only a few—must not be allowed to upset a custom of such long standing. Very full enquiry therefore would appear to be necessary.

I feel somewhat diffident in recording my views on a "special" matter of this kind of which I have had really no personal experience. I shall be glad to have the Legal Adviser's views on the legal aspect of the case, especially as regards (a).

*F.S.G. 2065/29; N.S. 1179/29.*

The Resident then pointed out that the discussion had gone off at a tangent from the assertion of the District Officer, Kuala Pilah, that no newly alienated land in that district could become "customary". He asked the District Officer to investigate the question.

The Resident also recorded that in his view the practical question then at issue was not to determine actual points of *adat* but rather to decide who should have jurisdiction to determine whether any given piece of land was "customary" or not.

8 Nov. 1929 • Meantime the District Officer, Jelebu, reported that his practice under the Small Estates procedure was to distribute land held by uninscribed titles according to the *adat* by virtue of section 184 (iii) (pp. 66, 67 *supra*). He recommended a short amendment to establish this practice as indisputably correct in law.

The District Officer, Kuala Pilah, (Mr. W. A. Gordon Hall, M.C.S.) then reported the results of a meeting of about half the sixty lembagas of his district in the following letter:—



**Meeting of Lembagas of Kuala Pilah.**

The lembagas agreed that only immemorial lands were inhe- 7 Nov. 1929  
rently subject to the Custom in this District. They would not go so far as to say that no land could now be marked "customary" as there might be lands unmarked owing to an oversight. They did, however, state emphatically that no new land ought to be marked and quoted the saying: "*Tanah pesaka ta' lemak oleh santan, ta' kuning oleh kunyit; di-anjak layu, di-chabut mati; ta' lapok oleh hujan, ta' lengkung oleh panas*". This clearly means that *tanah pesaka* is a definite and fixed thing and cannot be changed; whether it also means that it cannot be added to is somewhat doubtful, but they appeared to think so.

It will be noted that Dato' Sri Amar Raja Wahab was one of the lembaga present; his evidence quoted by Mr. Justice Burton appears to have been more according to common sense than to the *adat*.

The above appears to answer the questions in paragraphs 1 and 2 of Dr. Winstedt's Memorandum (*supra*, p. 68).

As to the question whether new land could be added, the meeting was of the opinion that Section 4 (ii) of the Negri Sembilan Enactment, 1926 was not according to the *adat perpatih* and considered that the *adat* followed the land.

In any case, as the Resident points out, the question which he raised is not that of deciding now and definitely whether the above is correct or not, but of fixing a method for ascertaining whether any particular piece of land is or is not governed by the custom. As the custom is always changing or becoming modified and is, in any case, of purely local significance, I am strongly of the opinion that the method suggested by the Resident is the best and that it should be made lawful. [N.S. 1179-29].

The Legal Adviser then prepared the first draft of a short amending bill to enable a District Officer to decide conclusively, subject to appeal to the Resident and Chief, that any given piece of land either was, or was not, "customary" within the meaning of the Customary Tenure Enactment. At the same time Sir Andrew Caldecott (as he now is) became Resident of Negri Sembilan. He contributed a long memorandum dated 8th January 1930 (N.S. 1179/29). It seems unnecessary to set this out in full because the writer subsequently "abridged" it. He begins with the pre-history of the State and the tradition that the present inhabitants are descended from the aboriginal nomads and argues that only the lands in certain valleys are ancestral. He quotes Parr as an authority for this but the minute referred



to dealt with the tribal option, not with inheritance. Throughout this memorandum Mr. Caldecott wholly failed to distinguish between tenure and inheritance. It may be true that at some period before British influence the tribes held lands in certain valleys by a tribal tenure while some members of the tribes held other lands outside those valleys by a tenure in some respects different but it does not follow that those other lands devolved according to different rules of inheritance. It is certainly not true that those other lands devolved according to the Mohammedan law. It is stated that "in 1901 the State Council accepted it as fact that division of property in Sungai Ujong was by Mohammedan law completely". That was not the fact then and it certainly is not the fact even now (as I will prove, see p. 80). Mr. Caldecott goes on to quote the Dato Rembau who in May 1928 expressed himself as desiring that acquired lands should devolve according to the Mohammedan law and as having said that he thought he could get a *bulat* on the point.

The Bill then came before the State Council.

The minutes are as follows:—

**Extract from the minutes of the Negri Sembilan State Council.**

28 Jan. 1930

The Council considers a Bill to amend the Customary Tenure Enactment, 1926.

The Resident in introducing the Bill explains that the amendment of the Customary Tenure Enactment, 1926, is considered necessary as a result of a decision by Mr. Justice Burton in Appeal No. 21 of 1928 (page 61 *supra*) to the effect that all land, whether ancestral land or new land, which belongs to any member of the twelve tribes must be inherited according to *adat perpateh* and never in accordance with *adat temenggong*.

The Resident states that from his own experience, this decision will fall heavily on the people of Jelebu and Kuala Pilah districts. Of the Rembau district he could not speak with certainty, as he had never been stationed there, and it appeared from the Secretariat records that Rembau Custom had been altered since the days of Mr. C. W. C. Parr, when it was the same as in Kuala Pilah and Jelebu.

He explains that if the amendment now before Council is passed no one will be compelled to follow either the *adat perpateh* or *adat temenggong*.

The wishes of the people taking up land will be considered in every case. If the land under entry in the Mukim Register is endorsed as 'Customary' it will follow the *adat perpateh*—if endorsed 'non-customary' it will follow the *adat temenggong* but wherever

no endorsement has been made the District Officer will have power to record, after due enquiry and subject to the wishes of the owners and their *waris*, not only what land is, but what land is not, subject to the *adat perpatih* and the Court will be bound by this decision.

Any decision so made will of course be subject to appeal under section 15 of the Customary Tenure Enactment, 1926.

His Highness and the four Undang speak in favour of the Bill each stressing the fact that in the case of new lands owners and their *waris* must have the right to choose whether they wish to follow *adat perpatih* or *adat temenggong*. They reiterate the importance of going slowly in the matter and of bringing no compulsion whatever to bear on owners.

The Resident undertakes to issue instructions to District Officers to this effect.

The Bill is passed unanimously and becomes Negri Sembilan Enactment No. 1 of 1930. (N.S.G. 1179/29).

### **Note on proceedings of State Council.**

I would emphasise the fact that nothing was said about the Mohammedan law. The Resident represented the difficulty as a conflict between *adat perpatih* and *adat temenggong*. This is as nearly correct as so concise a statement could be.

On the secondary points, however, the Resident's statements are confused.

It is in the Kuala Pilah district that there has been some change in the incidence of the custom. In Jelebu and in Rembau there has been little, if any, change during the period mentioned.

The Resident emphasised that if the District Officer found on enquiry that land was "non-customary" (which means, in this context, not subject to tribal options) it would devolve according to *adat temenggong*.

He added, and all the four Territorial Chiefs emphasised, that no compulsion was to be brought to bear, and the Resident undertook to issue instructions to that effect.

Five days later the Dato Rembau wrote to the Resident enclosing a copy of the following document.

### The Rembau Resolution.

Kepada 10.12.27

Bahawa dengan sa-sungguh-nya sahaya lembaga yang ber-sain dibawah ini telah bermashuarat dengan mendapat sabulat suara berkenaan dengan harta yang di-nasbahkan kepada charian semua-nya itu akan di-jalankan mengikut bahagian hukum shara' tentang daripada tanah pesaka ia-itu tanah O.T. yang turun menurun didalam suku itu tidak dapat dengan dibeli ya'ni dapat sahaja di-jalankan mengikut bahagian adat Rembau juga.

Signatures of 18 Lembagas.

3.2.1930.

Signature of the Undang of Rembau, N.S.

#### *Translation*

On 10.12.27.

We, the undersigned Lembagas, have truly conferred and arrived at a unanimous opinion with regard to the property classified as earnings, all of which shall devolve according to the shares under Mohammedan law; and concerning ancestral land, that is to say, land formerly held under "Old Title" which has devolved in the Tribal Division, and which has not been obtained by purchase, that is, obtained (by inheritance) only, shall devolve according to the shares under the Adat Rembau.

The word *bulat* literally means round, like a wheel, and a Bulat is a unanimous resolution. This must be the *bulat* which the Dato had previously stated that he thought he could get and apparently he had been trying to get it since 1927 but in the covering letter he carefully referred to it as a resolution and not as a Bulat because only 18 out of the 20 lembagas had signed it and in Rembau eyes it is therefore ineffective.

I knew, several years previously, that the Dato had some such idea in his mind and one of the lembagas told me in conversation sometime about the end of 1927 that an abortive meeting had been held. The then Dato Rembau was receiving what was, for a man of his antecedents, the stupendous income of about £3,000 per annum and he had acquired considerable interests in new rubber land. In the event of divorcing his wife he would, if the ordinary rule of adat, *chari bahagi*, applies to a Ruling Chief, have been compelled to give up half of this property to a woman with whom he had quarrelled. He had therefore a strong personal

motive for trying to bring about a change of *adat* on this particular point.

The word *akan* makes it quite clear that the resolution was recommending a change—not conveying an opinion as to the existing custom or practice. It is certain that the Dato understood it in this sense. Up to that date, the Mohammedan fractions had never been applied in Rembau, even to acquired land, as the Dato well knew for he sat with the Resident to decide the appeals, see for instance, the cases of Kahar and Puan, in “The Customary Law of Rembau” pp. 131, 166. The appellate judgment in the former reads:—

“The land becomes *pesaka* as soon as it passes into the ownership of the children of the original owner. The shares of the sons are their absolute shares, not life interest only, but on the death of any son his share will pass as *harta pembawa* to the customary heir, that is, to the nearest female relative in the tribe”.

A change of the fundamental nature contemplated by this resolution could only be effected by a positive act of legislation. A Bulat of lembagas, by its very nature, could not decide anything outside the *adat*. Also the lembagas were speaking for themselves—not for their tribes.

There is a further and very important point which is not apparent from the face of this resolution. These lembagas are not educated men and what they say can only be rightly understood with reference to their own knowledge and background. They are the chiefs of exogamous tribes, steeped in those traditional sayings in which custom and religion are often confused. When they said that they wanted acquired property to devolve according to the religious law, although they still wanted ancestral property to devolve according to the *adat perpatih* (as to which there is no difference of opinion anywhere) it is clear that their dominant idea was this:—“We do not want *charian* to be subject to restrictions on transfer, though we do want to maintain those restrictions on ancestral property”. Further, I have little doubt that they also meant “We want *charian* to devolve on the sons and daughters of the marriage”. I am, however, quite sure that they did not mean that they wanted the *charian* of a man who had been married twice to devolve on all his children of both marriages because that would mean that a given piece of land would descend in two different tribes. The Mohammedan law is founded on patriarchy. The *adat* is the purest matriarchy extant. The whole existence of the lembagas, as chiefs, depends on maintaining the integrity of the matriarchal tribe. It is utterly unreasonable to suppose that the lembagas meant to initiate a policy leading to their own abolition.

Yet if the first part of the resolution be divorced from its context and followed literally it would eventually bring about that result.

Moreover the resolution is wholly silent on the questions of the separate property of husband and wife, *harta pembawa* and *harta dapatan*, which are an essential part of the problem (see page 55).

It was on this very issue that the Customary Tenure Committee of 1927 came to a deadlock. The Dato Rembau then supported a proposal that "*charian* should devolve according to Mohammedan law." In the case of a man and a woman with issue of their own marriage only there is no difficulty but when asked what would happen if there were no children of the marriage, the Dato agreed that the proposal could not be made to work.

Nevertheless the Resident sent copies of his earlier memorandum, this resolution and his reply to the Dato's letter, to the District Officers of Tampin and Rembau with instructions to file them confidentially for guidance. This amounted to treating the resolution as a piece of legislation, although it was, on its face, inconsistent with the declaration of the State Council, only one week old, that they wanted to follow *adat temenggong*—a resolution which these instructions were supposed to implement. The results appear from the case of *Imah*, page 86 *infra*. Meantime the amending Enactment was duly reported to the Secretary of State who expressed the opinion that the restriction of the Collector's powers in Section 4 of the principal Enactment might be a necessary precaution and he asked for further information. (*F.M.S. despatch No. 187 of 19 May 1930; N.S. 1179/29*).

### The Report to the Secretary of State.

In response to this Mr. Caldecott wrote his second memorandum (dated 15th July 1930, N.S. 1179/29), and as the views he expressed were accepted by the Secretary of State (*F.M.S. Despatch No. 380 of 12th September 1930*), it is necessary to examine them in some detail.

The writer commences by saying that "this memorandum is largely an abridgment" of the earlier memorandum (page 71 *supra*) but the main trend and object are different; it is two-thirds as long and most of the contents are new.

In paragraph 2 he says:—

"The fundamental fact is that matrilineal succession is in flat contradiction to the Mohammedan law"

and that:—

“In Sumatra the action of the Dutch in reinforcing the custom against the religious law has led to serious disturbances”.

Now both these statements are in material respects inaccurate. The fact is that in some instances the two systems are in direct opposition but in other instances they lead to very similar results, as Mr Pengilley has shewn, (see page 85) and this fact has contributed to the prevailing confusion.

What happened in Sumatra, as appears from the quotation in the Memorandum, was that the Dutch Government backed up the local chiefs in the maintenance of their political power; it had nothing whatever to do with the law of inheritance.

In paragraph 3 the writer agrees with Mr. Wolff's policy (see page 115) of preserving the strictest impartiality between the Mohammedan system and the *adat*, but what he in fact did (having expressly promised the State Council not to favour either of the two systems of *adat*) was immediately to put pressure on a Malay officer to introduce the Mohammedan law of inheritance into a district where it had never before been applied.

In paragraphs 4 and 5 he refers to the judgment of Burton J. and the ensuing deadlock, which I have already discussed. (pages 54, 66 *supra*).

In paragraph 6 he states “as a historical fact, quite as important as the developments in Sumatra, that between 1874 and 1901, succession to property in the Seremban district passed from the customary to the Mohammedan system”.

Now in the memorandum of six months earlier he had stated that the change was from *adat perpateh* to *adat temenggong*. As the matter is of some importance I will examine it separately (see page 80). Here, I am only concerned to point out that in this part of the correspondence Mr. Caldecott writes first on conflict between *adat perpateh* and *adat temenggong* and then on conflict between *adat perpateh* and *Mohammedan law*. Did he change his view or did he think that *adat temenggong* and Mohammedan law were, for the purpose in hand, much the same thing? Actually they are materially different; that is why I have endeavoured to stress the importance of Wilkinson's work on the three systems.

In his paragraph 7 the writer criticises the judgment of Burton J. in *Re Haji Pais*, (*supra* p. 61) particularly the passage in which it was held that when property acquired by a married pair is inherited by their children it becomes ancestral property. Against



this view he cites the alleged *bulat*, already discussed on page 75. This paragraph is not in accordance with the facts and documents.

The judgment of Burton J. on the point of acquired property becoming ancestral, was based on Parr and Mackray, as is expressly stated in the judgment itself (*supra* p. 64).

This question of acquired property becoming ancestral is a complex one as I have indicated on page 55. It is not enough to state one or two isolated facts and then jump to a conclusion. In neither of his memoranda did Mr. Caldecott analyse the matter sufficiently to support an opinion. The "bulat" to which he refers did not come into existence till 1930 and it does not bear the meaning he put on it.

In paragraph 8 he quotes, from his own monograph on Jelebu, one of the traditional "sayings", correcting the earlier translation:—

"If religious law is strong, the custom does not dispute with it."

This is on page 27. The next line to it is:—

"If custom is strong the religious law does not dispute with it".

These Jelebu "sayings" correspond very closely to those collected by Parr and Mackray in Rembau. On the same page we find that "Custom is laid down in the Koran"—the very confusion which Wilkinson explains on page 2. No doubt these ancient sayings assist in understanding the custom but if he wished them to be compared with modern judicial decisions, should he not have enclosed a copy of his work with his Memorandum? Various minutes by Mr. Caldecott shew that he disapproved, on principle, of the idea of recording decisions on points of *adat* but his predecessor, Mr. Wolff, on the advice of an earlier Commissioner of Lands, had expressly directed records of such decisions to be preserved in each District Office. (*N.S.* 2078/26).

Paragraph 10 of the memorandum expresses the view that it is essential that the custom should be administered by the District Officers who have access to it in its native form, with appeal to the Resident and Chief and not to the Court. With this I agree, but the amending Enactment of 1930 was not designed to bring this about and in fact had the opposite effect. The memorandum continues:—

"It was a real inconsistency that the Court should be bound to accept as conclusive, a finding that land was customary but



should not be bound by a Collector's refusal or omission to come to such a finding. The actual result of that inconsistency was a pronouncement that the custom inevitably adheres to the tribal Malays in respect of new and individually acquired land (as distinct from ancient and inherited tribal property) an interference with their Mohammedan tenets which appears to be contrary to the treaty."

This passage is full of confusion. It would have been a real inconsistency that the Court should have been bound to accept as conclusive a Collector's finding that land was "customary" and yet not bound to accept his finding that it was not customary, but the law never was in that state. It is reasonable enough to provide by law that a formal decision by the Collector, after hearing evidence and subject to appeal to the Resident, shall be conclusive and binding, even on the Supreme Court, and it is equally reasonable to provide, as the amendment of 1930 did, that a definite finding to the contrary effect, if based on evidence recorded at a formal enquiry, should similarly be conclusive but could anything be more unreasonable than that the mere omission of the Collector to hold any enquiry, or to record any finding, should be binding on any one? Yet that is what actually happened in Imah's case (*infra* p. 86). The Assistant District Officer founded himself on the mere absence of any inscription and the Court treated that as conclusive. (The "actual result" referred to by the Resident in the passage quoted above is the order of Burton J, discussed at page 66 *supra*).

Then the opinion of the Judge that the personal law of the tribal Malays is *adat*, is said to be an interference with the Mohammedan tenets of the people and contrary to the treaty.

As to the former, this confuses law and religion; the passage in his own publication, to which Mr. Caldecott referred, shows that the ancient sayings of the people do confuse them but that does not justify confusing our legislation. As to the latter, the treaty provides that the protecting Power is not to interfere with "Malay Religion and Custom". How is it contrary to this for the Court to apply the custom?

In his eleventh paragraph the Resident says that the Amendment was "favourably received by the tribal Malays"; and as "proof" of this he quotes a letter from the Dato Rembau written only five days after the amendment was passed. At the highest, this only proves that the Dato (who was personally affected and had no legal training) hoped that the amendment would work in practice. The people could not so soon have become aware of any change.

Finally, the Resident says it may be necessary to "elasticise" the Enactment and he commends Mr. Wolff's policy of "keeping both doors open".

Almost everybody who has written on the subject has said that the Enactment of 1926 was too rigid and in several respects inconsistent with the *adat* but the amendment of 1930, as events have shewn, only emphasised these defects. What Mr. Caldecott actually did was in conflict with Mr. Wolff's policy.

Stated broadly the whole trouble is that the legislation on this subject has from start to finish been of a piece-meal and "tinkering" character, with little regard to the fundamental principles of law and never based on a comprehensive study of the subject. As Dr. Winstedt wrote many years ago "People pick up a few *disjecta membra* of the custom and argue as though they were the whole *corpus juris*".

### **The Practice as to Inheritance in the Non-tribal Districts of Negri Sembilan.**

In his memorandum of January 1930 the Resident of Negri Sembilan stated, as a very important historical fact, that between 1874 and 1901 the practice regulating succession to property in the Seremban and Port Dickson districts changed from descent in exogamous matriarchal tribes according to *adat perpatih*, to descent according to *adat temenggong*. It is, I think, generally accepted that the Malays of those districts, like those in the rest of Negri Sembilan and in the adjoining district of Naning in the Settlement of Malacca, originated in the matriarchal region of Sumatra but whether they ever established a tribal organisation in the Peninsula is a matter not free from doubt. However that may be, the tribal organisation, if it ever existed, had probably ceased to be effective by 1874 and it is therefore as certain as anything of this nature can be that the practice was *adat temenggong* when British officials were first concerned with it.

In his memorandum of July 1930, however, Mr. Caldecott stated, with equal confidence but without citing any authority, that during that same period the practice changed from the customary to the Mohammedan system. These two statements are mutually inconsistent and as it seemed to me that some definite evidence ought to be procurable I took the opportunity when passing through Seremban on local leave about the end of 1939, of calling on the District Officer, Mr. N. Coulson, who had only lately come to Negri Sembilan and had no previous acquaintance with this topic. I stated Mr. Caldecott's later proposition and Mr. Coulson immediately remarked that the large number of titles in the names

of Malay women negated the view that the statement is generally true. The District Officer then allowed me to inspect some of the mukim registers. He selected the mukim of Pantaj as a representative Malay mukim. There are four volumes of the register. I examined them again in January 1948. As is natural in view of the war there have been very few mutations in the interval.

The first volume consists mostly of titles derived from approved applications of the year 1899 to about 1903. Many of these were in the names of women from the start, and very few of them have been transmitted in the Mohammedan fractions. There are many transmissions to women including transmissions to women "as representatives". There are also many titles in the names of a man and a woman in equal shares. This is very often referable to joint acquisition by husband and wife.

The number of entries of the names of Chinese shews that this mukim is not an exclusively Malay area where principles of *adat* would be preserved to an unusual degree.

The second volume is derived from approved applications of 1913 and following years. Many of these have been transmitted to women as representatives and there are three or four cases of Mohammedan fractions. The third volume runs from 1916 onwards; most of these titles are in the names of women and I did not find any Mohammedan fractions in this volume. The fourth volume is the new form of register under the Land Enactment of 1926 and is derived from approved applications of 1926 and later. Many of these titles are in the names of Malay women and very few of them show Mohammedan fractions.

I then consulted the Assistant District Officer, Seremban, who has heard about a hundred Distribution Suits during the past year. Very wisely he hears as many cases as practicable in the mukims where the parties reside. In general the distribution follows a family settlement or *pakat* and disputed cases are few. In the majority of instances the beneficiaries are the widow or widower and children of the deceased and frequently the sons and daughters take more or less equal shares by consent. In a proportion of cases the sons take double shares but this is often attributable to the fact that one son is still an infant and incompetent to renounce or consent. It is felt that in such a case the rule must be applied strictly.

It is submitted that all this is actual evidence of fact and that it definitely negates the view that the Seremban district has changed over to the Mohammedan system. On the other hand it does show that in practice they have fairly consistently practised *adat temenggong* ever since the registers were established and that

they still practise it. This tends to support the view that application of the *adat temenggong* to acquired property in the tribal Districts would be in accordance with the wishes of the people.

### The Distinction Between Tenure and Inheritance.

It is true that tenure and inheritance may be connected but they are not the same thing. Land may be held on a tenure one of the conditions of which is that it devolves in a certain way, to the exclusion of the personal law as regards that land, while the other property of the deceased devolves according to his personal law.

Suppose, for instance, that a Scotsman residing temporarily in England acquired property and died intestate, before 1926 leaving land in Kent and land and also money in Sussex. Now up to 1925 land in Kent was gavelkind and descended to all the sons equally. Land in Sussex descended, according to the ordinary English law of real property, to the eldest son alone. But all the personal property would be distributed by the High Court in England according to the law of Scotland because the deceased was domiciled there and his personal law was therefore Scottish law.

Gavelkind therefore affords an illustration of a local customary tenure with a rule of inheritance which really was "attached to the land"; such land devolves according to a fixed law of inheritance, regardless of who owns the land or what his personal law is. This principle never has been and never could have been applied to "Customary land" in Negri Sembilan.

It may be quite true that in the sixteenth or seventeenth century the tribal Malays occupied lands in Negri Sembilan on two different tenures. It may also be true, though there is room for doubt about this, that the redeemed lands were subject to tribal options but that unredeemed lands were not so subject. There is, however, no evidence at all that the rules of inheritance were different. Parr and Mackray, at p. 68, say that they were the same.

However this may be, there are no lands in Negri Sembilan which are still held under either of those ancient tenures or under any other customary tenure. The Government long ago compounded with the "heirs of the soil" who surrendered all their, so to speak "manorial", rights in return for a guaranteed annual payment. All these lands, and all lands alienated since, are now held on one form of tenure only, a statutory tenure under the Land Code of 1926 consolidating all previous land enactments. There are still some distinctions between titles issued at various dates and many ancestral lands in Jelebu are held under Grant but for

the purpose in hand they are all alike. There is one tenure only and it involves no condition as to inheritance. Up to 1912 any person of any race and any nationality could buy any lot under any statutory title in any place and if he died intestate his property devolved by the same procedure by order of the same Court according to the same law, which was to apply the law of the community in every case. The sole exception was, and this only after 1909, that a tribal Malay could not sell outside the tribe without first offering the land to the tribe at a fair price. This was a restriction on transferability and in that sense a modification of the tenure but it was only a limited one. If the tribe did not elect to exercise the option the holder could then sell to a stranger and thereupon the restriction on the title was removed. Thus the modification of the tenure was attached not to the land but to the person. It is not well described as a modification of the tenure. It was an application of the personal law and the Enactment of 1909 would more accurately have been called "The Tribal Caveat Enactment". The power of the Collector to cancel the words "Customary land" is exactly like withdrawing a caveat.

It is quite true that the Enactment of 1926 is more strict but even now, if the Government quit-rent remains unpaid, the land reverts to the Government and can be alienated to another person in which case the restriction on further transfer would not apply so that even now the custom is not really "attached to the land". The tenure is only provisionally modified so long as the holder is a person subject to the custom. Despite appearance to the contrary, the general doctrine that the law of descent follows the person is not modified by this Enactment.

#### *Effect of the Amendment of 1930*

The first reported decision on the construction and effect of the amending Enactment of 1930 was a judgment of the Supreme Court in 1934 on an appeal from Kuala Pilah under the Small Estates (Distribution) Chapter of the Probate and Administration Enactment. The case is reported below.

### **Kutai v. Taensah.**

*N.S. Civil Appeal No. 11 of 1934*

*(Reported in 1933-34 F.M.S. Rep. p. 304).*

The deceased left an undivided one-third share in one mukim register holding and an undivided one-fifth in another. His daughter claimed the land on the ground that ten years before his death she had lent the deceased \$400 on the understanding that she would succeed to this property. The District Officer allowed this claim. Seven cousins of the deceased on his father's side

appealed to the Judge, claiming that there was insufficient evidence of the debt.

In his written judgment the District Officer held that apart from the question of debt the daughter was entitled to inherit the property under the *adat* because the lands were opened up by her parents from their joint earnings.

MUDIE J. held that the debt was barred by limitation and continued:—"This is not customary land. It has not been endorsed under the Customary Tenure Enactment 1926 or under Section 2 of the Enactment of 1909. Whether non-customary land acquired by parents from their joint earnings would descend according to the *adat* or the *hukom shara'* was never definitely settled until the passing of the Enactment of 1930 which amends the Customary Tenure Enactment by the addition of a new Section 25 which provides:—

Nothing in this Enactment contained shall affect the distribution of the estate, not being customary estate, of any deceased person.

It is clear therefore that this land is governed by the Mohammedan law".

Appeal allowed. Claim in respect of the debt of \$400 rejected. Land to be distributed according to the Mohammedan law.

### Commentary.

This seems to be a *non sequitur*. As no claim was made under the Customary Tenure Enactment it is difficult to understand why the Judge relied on that statute. He wholly ignored Section 184(iii) of the Probate and Administration Enactment, under which the appeal came before him, and which provides that the property shall be distributed according to the law and custom applicable to the deceased. In *Re Mansur deceased* (*infra*, p. 99) Cussen J. examined the matter more fully and came to a different conclusion.

The effect of the Judge's order was that the undivided one-fifth share would devolve on both parties to the appeal. The unsuccessful daughter would still receive a share and the remainder would be registered in the names of seven cousins in fantastic fractions. The area of the land is not stated but it is unlikely to have been more than about three acres in all.

This case has, however, been over-ruled by subsequent decisions, as to which see page 105.



### Secretariat Correspondence.

N.S. 1396/37 is a very curious file. It originated with a letter dated 11 June 1937 from the Ruler enclosing a list of holdings in the Kuala Pilah district said to have been distributed by the District Officer according to the Mohammedan law. This letter seems to have followed an unrecorded conversation. At some later date the docket was amended by the addition of the following:—

“II—Ruling as to the distribution of land not endorsed as customary”.

I cannot find any ruling. I think the object is to try to obtain one. Let us go through the paper.

The list is a list of some 55 Distribution Suits heard in the Kuala Pilah district from 1934 to 1937 in which distribution is understood to have been made according to the Mohammedan law on certificates by the Kathi of Sri Menanti. The District Officer (Mr. E. E. Pengilley) perused the records of all these cases and found that in only three of them was any claim made under the *adat*. He found also that in the majority of cases the property in question was acquired land and that the claimants were the surviving spouse and the children. In such cases he says there is little difference between the effects of the two systems of inheritance. The *adat* gives the property to the children of the marriage, equally or without any definite rule as to shares. The Mohammedan law gives two shares to each son and one to each daughter. The District Officer does not say so in terms but it appears that in these cases the devolution was to the children of the deceased. That is, there was no claim by step-children of the surviving spouse. He does not say what shares the surviving spouses inherited.

His conclusion is that the list was a list of virtually uncontested cases. He goes on to say that the disputes arise in two main classes of case:—

I—Where the property was acquired by the deceased before the marriage; and

II—Where there are no children of the marriage during which the property was acquired.

In the former case the tribal relatives of the deceased, usually his or her sisters, claim the property as *harta pembawa* or *harta dapatan*, that is the separate property of the husband or wife respectively. (See Parr and Mackray pages 86 and 90 and The Customary Law of Rembau, page 21 and the cases there cited).



In the latter case the surviving spouse claims the whole of the property under the *adat*\* and the relatives of the deceased, the in-laws, may claim according to the Mohammedan law, conceding, however, a small fraction to the spouse under that law.

In cases of these types therefore each group of claimants has a material interest in supporting one system rather than the other.

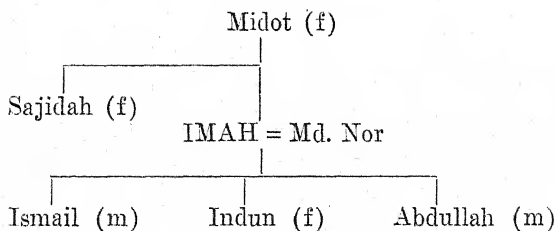
As the District Officer rightly says, the real question arises under section 184(iii) of the Probate and Administration Enactment—What is “the law or custom having the force of law applicable to the deceased?”

The next event was a disputed case from Rembau which is of some interest and importance.

### Re Imah dec.

(*Rembau Distribution Suit No. 66 of 1936*)

The family was as follows:—



The applicant was the daughter, Indun; she wanted the whole estate to be divided between the two sons and herself in the proportions of 2 to 1. She said that this had been agreed to “by the heirs”.

The son, Ismail, wanted a share (unspecified).

The husband wanted the estate divided according to Mohammedan law.

The mother wanted her share to go to the children of the deceased.

\* The claim of the surviving spouse is, in the other States, frequently put forward as a claim under the Mohammedan law, see for instance *Wan Mahatan v. Samat*, and *Re. Noorijah* in *Malay Family Law*. pages 25 and 59.

The sister wanted to be registered as trustee of the other son, Abdullah, who was an infant. She made no claim for herself.

The Collector transmitted the land to:—

The husband	$\frac{1}{4}$ or 15 sixtieths.
The son, Ismail	18 „
The daughter	9 „
The sister, as trustee of the younger son	18 „
	<hr/> 60 <hr/>

The daughter appealed to the Supreme Court on the grounds, *inter alia*:—

(a) That the land was part of a lot formerly held under an earlier title and was customary land and should have been marked as such;

(b) That the deceased and all the beneficiaries were members of a tribe, and were subject to the *adat perpateh*, and the Collector was therefore wrong in applying the Mohammedan law;

(c) That the land was ancestral land and belonged to the deceased woman before her marriage to Md. Nor, and was therefore *harta dapatan* (separate estate of the wife which devolves on her family) so that the husband was not entitled to any share.

In his statutory report the Collector stated the facts as above and proceeded:—

“A relation of the parties present at the hearing stated that the land was the property of the deceased and that the husband should not get a share. This was not recorded in the notes of evidence. The beneficiaries said nothing about it but it appeared that Indun had the same in her mind.

It was clear that the estate was not a customary estate as the title was not marked “customary” and therefore the Customary Tenure Enactment did not apply.

According to the Probate and Administration Enactment, section 184(iii), where no agreement exists the estate is distributed according to the law or custom applicable to the deceased. The

parties were Mohammedans and the land was not customary. Therefore the law applicable was the Mohammedan law. In this I followed *Kutai v. Ta'ensah*, 1934, Rep. p. 304 (*supra* p. 83), where Mudie J. said that property acquired from the joint earnings of the parents would descend according to *hukum shar'at*.

On the other hand it is established *adat* now in Rembau:—

(Here he set out the Resolution of the *lembagas* (*supra* p. 74) in Malay; a complete copy was annexed to the record).

The effect of this is that customary lands which were originally under Old Title and confined to a particular tribe must follow the *adat*. The land in question was never held under an Old Title and can be bought and sold without restriction.

For the above reasons I held that this estate must be divided in accordance with Mohammedan law. Since the mother who was entitled to one-sixth asked that her share be distributed among the children of the deceased, I distributed it (as above, p. 87)."

### Commentary.

When the relation alleged that the land was the separate estate of the wife, the Collector clearly ought to have taken evidence on the point and recorded it in his notes. None of the claimants ever suggested that the land was the "joint earnings", so the ruling of Mudie J. was clearly distinguishable. The Collector's decision amounts to this, that if the title is not marked "customary land", the land cannot be treated as *harta dapatan*. The resolution of the *lembagas* deals in terms with *charian* and with ancestral land. Whatever the value of the resolution may be, it does not touch on the question of land acquired during a previous marriage. Also if the Mohammedan law applied, why was the sister of the deceased appointed guardian?

The real point at issue depended on the history of the land and this was never investigated. The record shews that the land was previously held under E.M.R. 187 which had been subdivided; the portion in dispute was E.M.R. 823. It may be correct that it was never held under an "Old Title" but the low number, 187, proves that it could not have been alienated during the marriage of deceased and Md. Nor. It is clear that they did not purchase it and therefore the land was certainly *harta dapatan*, the separate estate of the wife, and should have devolved on her daughter. It was probably ancestral property but if not, it must have been either *charian bujang* of the deceased or her share of the *charian laki-bini* of a previous marriage (and according to Parr and Mac-kay, at page 76, it would on transmission to her children become

subject to the rules governing ancestral property in which case the title should have been inscribed "Customary land").

It is clear from the Collector's report that the husband and elder son of the deceased had exerted pressure on the daughter (obviously a young woman, since her next brother was an infant and her aunt was preferred to herself as the guardian) so that they could obtain shares in the land.

From the point of view of Rembau the main question was whether the land devolved in the tribe. The mother did not object to inheritance by her grandsons who are, of course, of her tribe. The real objection was to the inheritance of a share by the husband who was necessarily of a different tribe.

On the appeal, PEDLOW, J. held that under the Customary Tenure Enactment, as amended in 1930, land must be either customary or non-customary and that the only land which can now descend according to the custom is "customary land" (meaning land the title to which is inscribed "customary"). He agreed with Mudie J. (p. 83 *supra*) that Mohammedan law governed the distribution and therefore dismissed the appeal.

The Judge ignored the words of section 184(iii)—"law or custom having the force of law applicable to the deceased". He treated the question of succession as attaching to the land. [The appeal is reported in 1937, F.M.S. Rep. at p. 89].

### Memorandum by the District Officer, Kuala Pilah

(Mr. E. E. Pengilley, M.C.S.)

The next event was a Memorandum by the District Officer, Kuala Pilah, who held meetings of his chiefs and lembagas, and in view of their difficulty in expressing a clear opinion on any general issue, he put two concrete questions to them, representing two of the types of case in which succession is commonly disputed. The answers shewed that a reasonable majority of the lembagas thought that *harta pembawa*, that is the property acquired by a man before the marriage of his last spouse, should devolve on his own tribe, according to *adat perpateh*, and not on his children according to Mohammedan law.

The District Officer quotes the following minute by Mr. Wolff:—

"The view I take on this subject is that the Customary Tenure Enactment does not purport to be a statement of the *adat perpateh* but lays down the particular restrictions that

are imposed on 'customary land', which for practical purposes is synonymous with 'ancestral land'. Such land comes (*i.e.* for purposes of intestate succession) under the Customary Tenure Enactment while land not so endorsed comes under the 'Small Estates' chapter of the Probate and Administration Enactment. But in the latter case a Collector is not relieved of the duty of taking account of local custom in regard to any questions relating to the land which may come before him, nor is the Court."

The District Officer draws attention to the conflict between the decisions of the Judges; he explains that in his considered opinion the *adat* ought to prevail and asks for a definite ruling and for an amendment to make the position clear.

The next case was from Kuala Pilah.

### Re Teriah dec.

(Kuala Pilah Distribution Suit No. 138 of 1936).

The deceased left three pieces of land and some cattle and jewellery and debts amounting to \$220. The net value of the estate was estimated at \$700. She left a sister, a brother, a widower, a son who was insane and his son, her grandson, an infant.

The sister claimed distribution of all the property among herself, her brother and the son of the deceased, according to the *adat*, because all the property was acquired before the marriage and was therefore *harta dapatan* in which the husband had no share. The sister had paid the funeral expenses.

The husband applied for distribution according to Moham-medan law.

The lembaga gave sworn evidence that he had investigated the case from both sides, that all the property was *harta dapatan* and should therefore devolve on the tribal relations of the deceased, subject to this qualification—that the property included, or represented, a sum of \$100 acquired jointly by the deceased and her husband and that accordingly the sister and brother ought to pay \$100 to the husband out of the property or as a condition of, inheriting it. The sister had agreed and actually tendered the money to the lembaga but the widower had not attended to complete the settlement which had therefore fallen through.

The husband admitted that the property was *harta dapatan* but adduced further evidence tending to show, from dealings with the land and animals during the marriage, that \$100 was an under-

estimate of the joint earnings during the marriage. He also said that he had paid part of the funeral expenses.

It is clear that the trial digressed into the investigation of the debts of the deceased, thus raising issues not really relevant to the question of succession.

It was also proved that the deceased had been killed by her son who had since been sent to a mental hospital. The lembaga gave further evidence that according to the *adat*, a child who slays his parent is not debarred from inheriting the estate if he is insane (The note is obscure but I take this to be the effect. E.N.T.). He also said that, according to *adat*, property acquired by a woman before her marriage devolved on her children, (not on her relations, as he had stated at the previous hearing).

After an adjournment the Kathi was called to give evidence of the Mohammedan law. He said that according to Mohammedan law, even an insane killer could not inherit from the person killed but the children of the killer were not debarred. Therefore in his opinion one quarter of the estate should devolve on the widower and three quarters on the grandson. After a further postponement the Collector granted letters of administration to the sister of the deceased.

The widower appealed.

### Judgment of the Trial Collector.

The Collector stated the facts, as above, and continued:—

“The deceased left property in two categories:—

- (a) Property acquired when she was unmarried;
- (b) Property jointly acquired by her and her husband.

Immediate distribution is complicated by the fact that one of the heirs, under either system of inheritance, is insane and another, the grandson, is a minor.

In this district the normal guardian of minor heirs is chosen from the female not the male relatives. In this case the grandson is living with the applicant, the sister of the deceased.

Even under the Mohammedan law, the grandson is entitled to the greater portion of the estate.

Under these circumstances, I consider it equitable for the sister to administer the estate, while the son is under mental in-

capacity, and the grandson is a minor. Moreover, there are various debts to be settled.

For all these reasons I came to the conclusion that the best order in this case was not an immediate order for distribution but an order granting administration to the sister of the deceased pending three things:—

- (a) the settlement of the debts;
- (b) the incapacity of the son;
- (c) the minority of the grandson.”

In a further note the Collector drew attention to the facts that in his District the next-of-kin of a deceased woman is her nearest female relative not her widower and that if the Moham-medan law applied, then according to the Kathi's evidence one of the beneficiaries was the infant grandson.

### Commentary.

It is clear that in the first place all parties agreed, on a basis of *adat*, that the property was, in the main, *harta dapatan* and should go to the sister and son, subject to payment of the husband's claim to so much as represented his share of the joint earnings. The difficulty arose from the practical impossibility of ascertaining those earnings (see the judgment of Daly J. in Wan Nab's case, Malay Family Law, p. 20). Also it is always a matter of intense difficulty among peasants either to find cash or to divide the property in kind. The lembaga may say—“Give him the buffalo and settle it” but the other replies—“How am I then to plough the land which admittedly comes to me?”. Dissatisfied with the \$100 which was tendered, the widower said—“I would rather litigate. If I claim under the Mohammedan law I might get more”.

It is clear that by “nearest female relative” the Collector meant, the nearest on the mother's side—that is the nearest in the tribe—see “The Customary Law of Rembau”, p. 28 and the cases there cited.

The judgment of the Supreme Court was as follows:—

### Judgment on Appeal.

RAJA MUSA, J.—Lands in Negri Sembilan are either:—

- (a) Customary Lands or

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## (b) Non-customary lands.

Customary lands are subject to the Customary Tenure Enactment Cap. 215 and devolution thereof is governed by that enactment. The devolution of Non-customary land is governed by the ordinary law of the land—in the case of the Mohammedans by the *hukum shara'* and in the case of others by the Distribution Enactment Cap. 71.

The lands, the subject matter of this appeal, are admittedly not Customary lands and their devolution must be governed by the *hukum shara'*—see the Judgment of Mudie J. reported in 3, M.L.J. at p. 251 (and *supra*. p. 83) and the Judgment of Pedlow J. in Imah's case, 1937 F.M.S. Rep. p. 89 (and *supra* p. 89).

Under section 179 of the Probate and Administration Enactment (Cap. 8) the persons entitled to apply for distribution are those persons who "according to the rules for the distribution of the estate of the intestate applicable in the case of the deceased are entitled to the whole or any part of the deceased's estate".

In this case the rules of distribution are the rules of the *hukum shara'* and according to those rules the persons entitled primarily to a share in this estate are the husband (the appellant) and the son (Sarul) of the deceased to the exclusion of sisters (of whom the respondent is the only one) and brothers. That being so the respondent is not entitled to representation and I accordingly allow the appeal and set aside the order of the Collector. There will be an order for the issue of grant of letters of administration to the appellant instead. I make no order as to costs.

In this case there is an allegation that the son of the deceased caused her death, and for that reason he is, according to *hukum shara'* deprived of his share of her estate but that his son replaces him.

Since the order made in this case is merely one for the grant of letters of administration and not an order for distribution it is not necessary to consider the true position of the son, Sarul, at present. That consideration arises only when distribution is sought. For the present I will merely remark that the evidence on the record is, in my opinion, insufficient to deprive him of his distributive share in this estate".

### Commentary.

With all due respect to the learned Judge, it does not appear that he ever looked at the realities of the case. His decision does not follow from his own argument. He says first that the ordinary

law of the land is the Mohammedan law but as regards guardianship that is certainly not correct. Even if the sister was not entitled to any share in the estate in her own right, the fact remained that she was the actual guardian of the grandson and it follows that she would be the proper committee of the person of the lunatic, were he released. The Judge did not comment on, or disturb, the Collector's finding on the issue of guardianship yet he granted administration to the widower who, on the Judge's view, was entitled only to one-quarter of the estate instead of to the sister who in her representative capacity was entitled to three quarters.

It is hardly fair to give all the property to one side and leave the onus of supporting the beneficiaries under disability on the other. (See also, Note on conflicting decisions, p. 105).

### Re Haji Mansur dec.

This case is somewhat complicated. The deceased left a widow and children and also children by two previous wives from whom he had been divorced. All were members of matriarchal tribes and they made conflicting claims under the *adat*. As it appeared to the District Officer that an issue of the Mohammedan law also arose he stated a case for the decision of the Supreme Court as to which system applied. As the question was more thoroughly examined than in some of the earlier cases the judgment of Cussen J. is reproduced here but I would first point out that the District Officer's statement of the case is in one important and very interesting respect, incorrect.

There were five lots of land. Two were admittedly acquired during the last marriage and were claimed by the widow for herself and her child on that ground. None of the other parties made any claim to these two lots.

The remaining three lots were claimed:—

(a) by the sisters of the deceased.

This was a claim to *harta pembawa*, property belonging to the man before the marriage, which on his death returns to his own tribe.

(b) by the children of the previous marriages during which they were acquired.

The District Officer says that this claim was made under the Mohammedan law, and would be barred under the custom. There is confusion of thought here.

If the estate were to be distributed according to the Mohammedan law, the widow would inherit one-eighth (as against sons) of the whole estate and all the children of the deceased, irrespective of who their mothers were, would inherit the residue, each son taking double the share of a daughter. When the children abandoned all claim to the two lots, they in effect admitted that the estate was not distributable according to plain Mohammedan law. What they actually contended in their evidence was that the property acquired during the marriage of their parents should, on the death of the surviving parent, devolve on the children of the marriage. The District Officer seems to have assumed that this claim could only be based on Mohammedan law because the sisters of the deceased claimed the same property under the *adat*. This view is mistaken. The case was very like *Re Kahar* deceased, reported in *The Customary Law of Rembau* at p. 129. The real question was whether on the divorce of the previous wives, the property of their marriages was properly divided between husband and wife. If it was so divided, then the children inherit the wife's share, and the husband's share becomes *harta pembawa* of the subsequent marriages, and on his death it returns to his sisters. If, however, the property is not so divided but is retained by the surviving husband and he lives with the children, then on his death they inherit it, sons and daughters equally. (*Re Kahar, supra*). There was definite evidence that after the divorce, a son of the divorced wife had assisted his father to cultivate one of the disputed lots.

The question was not investigated from this point of view, and it is impossible to form an opinion from the evidence recorded as to whether the sisters or the children should have succeeded. It is significant that, although the son mentioned was a Haji, he did not say anything about Mohammedan law; he gave evidence of living on the land and cultivating it, facts which were only relevant to a claim based on custom. The only mention of the Mohammedan law was by the Penghulu who said:—

"If there is a divorce the children go to the wife and they can have no further claim on their father's property. This is the rule of custom, and has been followed in Gemencheh. The Mohammedan law has only recently been followed. The change over began in the time of Major Kidd about ten years ago" (Major Kidd left Tampin in 1927, E.N.T.). "This change was only effective to a small extent. According to the custom, if a man remarries after he has acquired property, the child of this marriage can claim some of his property but not all. The rest goes to his waris".

The last sentence means that where, as here, *pembawa* property is improved during a marriage, the improvement ranks as

*charian laki-bini* and the property is divided between the sisters of the deceased and the children of the second marriage. This is correct, see Customary Law of Rembau, page 22 and the cases there cited.

The suggestion that Major Kidd initiated a change in the practice relating to succession cases is unfounded but it is quite likely that later District Officers had occasionally made orders similar to the one made by Mr. Nash, p. 58 *supra*.

The point is, however, that in this case no claim was made under the Mohammedan law.

The District Officer was consciously looking for a case of dispute as to which system applied so that he could refer the point to the Supreme Court. His mind therefore was predisposed to mistake a conflict as to the applicable rule of *adat* for a conflict between *adat* and Mohammedan law. Actually the real dispute was a dispute as to facts of a somewhat unusual kind and there is a tendency to seek to decide such issues as though they were issues of law.

The case is set out in the following memorandum of the District Officer, (Mr. H. A. L. Luckham, M.C.S.) :—

“The claimants to the property left by the deceased Haji Mansur may be divided into three groups:—

- (a) His sisters, Pamah and Minah;
- (b) His children by two wives, who were divorced some time prior to his marriage, Nomi, Haji Pilus, Bayang, Amat and Konit;
- (c) His widow, Simban, and his youngest son, Hussin.

Of the five pieces of land left, Simban claims two, E.M.R. 2752 and 2754, Gemenchah, as *charian laki-bini*. This is a good claim according to the custom and is supported, or partially supported, by provisions of the Mohammedan law. None of the other parties make a claim to these two lots. The remaining three are claimed by the sisters under the custom; under Mohammedan law any claim from them would be barred by the existence of the wife and children of the deceased.

These lots are also claimed by the children of the deceased's previous marriage. This claim is under the Mohammedan law and would be barred under the custom. Under the custom, when there is a divorce, there is a settlement of claims between the two

parties and after the divorce neither the wife nor her children have a further claim on the husband's property.

Finally the widow also sets up a claim to the three lots on behalf of herself and her child. Her claim can be based on either the custom or Mohammedan law but has in either case to be weighed with the other claims. It is agreed that all parties are members of customary tribes.

It is important, therefore, to decide whether or not the distribution of this estate should be effected according to the custom or according to Mohammedan law.

This Mukim, Gemenchih, is part of the *luak* of the Undang of Johol, which together with the other *luak* of the districts of Tampin, Kuala Pilah and Jelebu form the customary districts of Negri Sembilan *i.e.* the Customary Tenure Enactment (Cap. 215) is applied to these districts and unquestionably in the past all matters of succession to land were regulated according to the custom and this custom had the effect of law. I would refer to the explanation of the Rembau custom contained in "Rembau" by C. W. C. Parr and W. H. Mackray, Journal of the Straits Branch of the Royal Asiatic Society No. 56, and to "The Customary Law of Rembau" by E. N. Taylor, Journal Volume VII part I, Malayan Branch of the Royal Asiatic Society. These, of course, only refer to the custom as it was followed in the *luak* of Rembau but the custom as it was followed here was similar to the Rembau custom in principle with only differences of detail.

I have recorded briefly a statement from the Penghulu, the head customary official of Gemenchih, a statement as to the partial change over to the Mohammedan law but I have not thought it necessary to call numerous witnesses to the acknowledged fact that in the past, and until relatively recently, in Gemenchih as well as Rembau and other customary districts, all questions of inheritance were decided according to the custom. The custom was, in fact, followed for many years after the constitution of the State of Negri Sembilan.

There are also two judgments of the Supreme Court that the personal law of Malays in customary districts is the Custom viz:—

(i) Mr. Justice Acton, quoted on page 65 of Taylor's Rembau;

(ii) Mr. Justice Burton, Re Haji Pais dec. (p. 61 *supra*).

There are, however, a series of judgments of the Supreme Court, dating from 1934, to the effect that the distribution of the property of Malays in customary districts should follow the Mohammedan law, except when land is concerned the title of which is endorsed "Customary". They are:—

- (i) Mr. Justice Mudie—Kutai v. Taensah (p. 83 *supra*);
- (ii) Mr. Justice Pedlow—Re Imah dec. (p. 89 *supra*);
- (iii) Mr. Justice Raja Musa—Re Teriah dec. (p. 92 *supra*).

The ground for all these decisions is, I think, contained in the following paragraph of Mr. Justice Mudie's judgment:

This is not Customary Land. It has not been endorsed under section 4 of the Customary Tenure Enactment, 1926, or under section 2 of the Customary Tenure Enactment, 1909. Whether non-customary land acquired by parents from their joint earnings would descend according to the adat or the *hukum shara'* was never definitely settled until the passing of the Customary Tenure (Amendment) Enactment, 1930, which amends the principal Enactment by the addition of a new section 25, which provides:—

Nothing in this Enactment contained shall affect the distribution of the estate, not being customary estate, of any deceased person.

It is clear, therefore, that this land is governed by the *hukum shara'*.

With respect I would submit that this new section 25 does not give decision as to whether the estate, not being customary estate, of any deceased person, shall be distributed according to the *hukum shara'* or *adat perpateh*; it only lays down that the complicated procedure of the Customary Tenure Enactment should not be followed with respect to such estates.

I would also urge that so momentous a change as the change from *adat perpateh* to the *hukum shara'* could only be effected by direct legislation and that such legislation should state clearly and unequivocally that the *adat perpateh* was being replaced by *hukum shara'*. As far as I am aware there has been no such legislation.

I, therefore, ask for the directions of the Supreme Court as to whether I shall follow the custom (*adat*) or Mohammedan law (*hukum shara'*) in distributing this estate.

#### Re Haji Mansur dec.

*Tampin Distribution Suit No. 11 of 1938.*

(Reported in 1939 F.M.S. Rep. 73)

*The Customary Tenure Enactment—effect of presence and absence of the words "Customary land" considered and explained.*

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The Customary Tenure Enactment, 1926 is not exhaustive of the *adat*. If a title has been inscribed "Customary Land" the *adat* governs succession but the converse of this is not true.

The absence of the words "Customary land" does not prove that the land is not occupied subject to the custom. The only conclusive proof that the land is not so occupied is a recorded finding by the Collector to that effect, under section 4.

As regards land occupied subject to the custom in respect of which the titles are not so inscribed the customary law of succession still applies.

Judgment of Burton, J. in *Re Haji Pais* dec. (*supra* page 61) followed.

Judgment of Mudie, J. in *Kutai v Ta'ensah* (*supra*, page 83) discussed and not followed.

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CUSSEN, J. This is a case stated under section 188 of the Probate and Administration Enactment which reads as follows:—

If any difficult point of law or custom arises in the course of any proceedings under this Chapter the Collector may state a case for the decision and directions of the Court.

The case as stated by the Collector is set out above, p. 96.

Under section 184(iii) of the Probate and Administration Enactment the Collector shall distribute the estate "according to the law or custom having the force of law applicable to the deceased."

Section 173(f) refers to "rules of Mohammedan law as varied by local custom in respect of the distribution of...the estate of a deceased person."

Section 2 of the Distribution Enactment reads:—

"Nothing in this Enactment shall apply to the estate of any person professing the Mohammedan religion or shall affect any rules of Mohammedan law as varied by local custom in respect of the distribution of the estate of any such person."

It is clear then that the distribution is to be governed either by the law *i.e.* Mohammedan law, or custom having the force of law *i.e.* unwritten law, or by some combination of the two. There has been, and is still, beyond any doubt, a body of unwritten law, that is customary law, known as *adat*, in existence in certain parts 1948] *Royal Asiatic Society*.



of Negri Sembilan. Such *adat* or customary law provides rules for the distribution of land of deceased persons belonging to the tribes of Malays amongst whom that custom exists as law. Such a body of unwritten law, that is customary law, must be presumed to continue to exist until the contrary is established. Such unwritten law may be destroyed in whole or in part by legislation which must be express or be by necessary implication. Except where it is shown that such *adat* or unwritten law has been so repealed, that law must be given effect to within the sphere of its operation. Part of such customary law referred to land, and the question which is raised in this reference is as to whether or not that customary law has been repealed, or its sphere of operation limited, by the provisions of the Customary Tenure Enactment.

It is necessary therefore to consider and construe the provisions of this enactment.

Lands in the districts of Kuala Pilah, Tampin and Jelebu occupied by Malays who are members of certain tribes set out in Schedule B may or may not be "occupied subject to the custom".

"Custom" is defined as meaning "the customary land law of Malays resident in the districts of Kuala Pilah, Tampin and Jelebu who are members of the scheduled tribes".

The enactment provides a procedure for determining whether or not such lands when held under entry in the mukim registers are or are not occupied subject to the custom—section 4(i).

If the Collector finds that the land is occupied subject to the custom *and* if it is registered in the name of a female member of one of the said tribes, then he adds the words "Customary Land" to the entry in the mukim register and such endorsement is conclusive proof that the land is occupied subject to the custom.

It is to be noted that no provision is made for the case where the land is occupied subject to the custom but not registered in the name of a female. It would, in the language of the section, seem open to the Collector to find that the land was occupied subject to the custom although registered in the name of a male.\*

The section also provides that if the Collector is not satisfied that such land is occupied subject to the custom he shall record his decision which, subject to appeal, is conclusive proof that the land is not occupied subject to the custom.

This means, I think, that even where the land is registered in the name of a male the Collector may still hold an inquiry and determine whether or not it is occupied subject to the custom.

\* This is correct—see Customary Law of Rembau, p. 191.

Provision is also made for endorsement of the words "Customary land" in the case of fresh alienation to female members of the tribes.

In the first Customary Tenure Enactment—the enactment of 1909—it was provided in section 2 that in the case of lands entered in the mukim registers of the said districts "it shall be lawful for the Collector, if he shall be satisfied that such land is occupied subject to the custom to add to the entry in the mukim register the words "Customary land" which is conclusive proof that the land is occupied subject to the custom".

The section also provided (by a 1919 amendment) for such endorsement with like effect to be made in the case of fresh alienation of lands without any restrictions (expressed) as to the sex of the persons registered as owners.

This section 2 of the enactment of 1909 is to be distinguished from the present section 4 in that (a) it does not make the sex of the registered owner a factor governing the endorsement and (b) it makes no provision for the case where the Collector is not satisfied that the land is occupied subject to the custom. If he is satisfied it is lawful for him to endorse but, if he is not satisfied, that is not conclusive of the question whether or not the land is subject to the custom.

So much is necessary to be stated and kept in mind when we consider the definition in the Enactment of "Customary land".

By section 2 :—

"'Customary land' shall mean land held by any entry in the mukim register which has been endorsed under the provisions of sub-sections (i) and (ii) of section 4 of this Enactment or under section 2 of 'The Customary Tenure Enactment, 1909'."

It therefore means only land in respect of which the endorsement "Customary land" has been made in the mukim register.

Is it a valid conclusion to hold that no land is to be considered as occupied subject to the custom (which is described in the 1909 enactment as a tribal custom) unless the title for such land is so endorsed?

In the case of the 1909 enactment the endorsement is only evidence that the land is occupied subject to the custom; there is, on a proper construction of the enactment, no ground for holding

that land in respect of which no endorsement has been made is not occupied subject to the custom.

Endorsement under section 4(i) of the present enactment does not provide for the case where the Collector is satisfied that the land is occupied subject to the custom but is registered in the name of a male.

The fact then that the entry in the mukim register relating to any land does not bear the endorsement "Customary land" does not prove that the land is not occupied subject to the custom.

On the contrary it is the recorded decision (after inquiry under section 4(i) ) that the Collector is not satisfied that the land is occupied subject to the custom which affords conclusive proof that it is not.

There is no ground for any such proposition as that only land in the name of a female can be held subject to the custom. There is nothing in section 4 on which to found it and the provisions of section 3 plainly indicate the contrary *i.e.* that land may be registered in the name of a male and still be subject to the custom.\*

The original 1909 enactment was entitled "An Enactment to provide for the preservation of Customary Rights over certain lands". The Preamble reads as follows:—

"WHEREAS certain lands in the administrative districts of Kuala Pilah and Tampin have been and are lawfully occupied by the members of certain tribes enumerated in the schedule in accordance with their tribal custom, which is hereinafter referred to as 'the custom';

AND WHEREAS it is expedient that particulars of the said lands be entered in the mukim registers of the said districts in accordance with the provisions of Part III of the Land Enactment, 1903, but so that nothing in such entries shall impede the due observance of the custom;

AND WHEREAS particulars of certain of the said lands have already been entered in the said mukim registers;

It is hereby enacted by His Highness the Yang di Pertuan and Chiefs in Council as follows:...."

It is clear from this that the object of this enactment was not to create or declare the customary rights but to protect them

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\* See footnote, p. 100.

from the danger arising from the application of the system of land registration—title by entry in the mukim register—to these lands. The obvious danger was the destruction of particular rights by reason of transactions with third parties acting in good faith on the register.

The present enactment appears to contain far more substantive law as regards what the custom is, though there is nothing from which to conclude that even this latest legislation is to be construed as being in its contents exhaustive of the custom—as being in any way a complete code of what the customary land law is in substance.

In so far as it does it may be taken as the embodiment in written law of the unwritten customary law. To that extent the customary law is replaced by the enactment.

But a living body of customary law cannot be destroyed by a written law except by express declaration or by necessary implication.

“There is no doubt that, as a general rule, customs or rights of a similar description are not to be taken away by inference or without distinct words”. *Green v Reg*, 1878 A.C. 513.

The analogy from English law of the effect of a statute on the Common Law is, I think, applicable, and there is clear authority that a statute does not override or displace the Common Law except by express declaration or necessary implication.

The effect of the Customary Tenure Enactment reviewed and examined by these accepted canons of construction is, in my opinion, in the case of “Customary land” as defined, to replace in whole or in part the unwritten law of custom by the written law of the Enactment; but this only applies to “Customary land”. For such land, the old customary rights are replaced by the statutory rights to whatever extent this enactment can be held, on a true construction, to contain such rights. I express no opinion as to whether in respect of such “Customary land” the enactment should be held to be exhaustive of such rights.

But as regards land subject to the custom in respect of which mukim registers have not been endorsed, the customary law still applies and should be given effect to.

Until the judgment of Mudie J., in *Kutaj v Taensah* (*supra* page 83) it appears that effect was given to the *adat* or custom in matters relating to the distribution of land following on the decisions of Acton J., in *Re Kulop Kidal*, dec, N.S. L. A. Petition

106/26, (Customary Law of Rembau, p. 92) and Burton J., in Re Haji Pais dec. (*supra* p. 61).

In the latter case the learned Judge considered very fully the nature and position of *adat* or customary law among the people subject to it.

The decision of Mudie J. has been followed by Pedlow J. and by Raja Musa J., and that decision of Mudie J. is based upon an interpretation of section 25 of the Customary Tenure Enactment which reads:—

“Nothing in this Enactment contained shall affect the distribution of the estate, not being customary estate, of any deceased person’. It is clear, therefore, that this land is governed by the *hukum shara*.”

With respect I disagree with the conclusion the learned Judge arrived at, based upon this negative provision in the enactment.

Section 25 means exactly what it says and nothing more. I do not think that the positive proposition by the learned Judge based upon that section is validly derived. I may point out that even if valid, this conclusion could only extend to land in the customary tenure districts (Kuala Pilah, Tampin, Jelebu) held by members of the scheduled tribes, as the conclusion is based upon section 25 of the Customary Tenure Enactment. It is not, as so derived, a valid conclusion as regards other land. And it may be pointed out that a substantial part of Negri Sembilan lies outside the customary tenure districts.

To give an example of one result which would follow from this interpretation, it would appear that whereas in the lifetime of the registered owner of a piece of land in the mukim registers of the districts of Kuala Pilah, Jelebu and Tampin the Collector may enquire under section 4 of the Enactment and decide that the land in question is subject to the custom and, if the registered owner is a female of one of the scheduled tribes, endorse on the register the words “Customary land”, thereby deciding the law governing the distribution of such land, if such registered owner died the Collector would be precluded by section 25 from any inquiry and from making any such endorsement and the distribution of the land would be not according to the custom but according to the *hukum shara* (Mohammedan law). Such a result seems a very artificial one.

In my opinion, therefore, section 25 has not the effect attributed to it and does not confine the operation of customary law as has been held in the judgments referred to and therefore I am of

opinion that distribution of the land in question should proceed according to the custom so far as the custom provides for such distribution.

This conclusion I have arrived at, like that of Mudie J. (*supra*), proceeds upon the interpretation and construction of the Customary Tenure Enactment. I have not overlooked the provisions of section 23 of that Enactment which reads as follows:—

“If doubt shall arise as to the mode of operation of this Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same may be referred through the Resident to the State Council who shall decide the same and such decision shall be final and shall not be questioned or revised by any Court.”

That gives the State Council an entirely arbitrary and unrestricted power to interpret this enactment. Such interpretation is in reality amendment of the enactment. It must, of course, be given effect to as legislation but its meaning and effect are to be interpreted in the Courts according to the established rules of construction.

#### **Note on the Conflicting Decisions.**

The decision of Raja Musa J. in Teriah's case (page 92) where he followed Mudie J., should be contrasted with his decision in Teh v. Kelsom, reported on p. 106, where he applied the customary rules relating to *harta sa-pencharian* and *upah* in a distribution appeal from Pahang.

The position was therefore that if Mudie J. were right, custom could be applied under the Probate and Administration Enactment everywhere except in the customary districts of Negri Sembilan. This result is even more artificial than the example given in Haji Mansur's case on the previous page.

This conflict of judicial decision, however, has been resolved by two reported judgments of Horne J. which are reproduced below at pages 107 & 110 from the original files with a somewhat fuller statement of the facts than is contained in the Law Reports.

The legal position is now clear. If the deceased was a member of a tribe, the property devolves according to *adat*, even though the titles are NOT marked “Customary Land”.

This, however, though it resolves one of the former doubts, does not solve the problem. On the contrary the highly contentious question whether, and if so when, the words “Customary Land” ought to be added to acquired titles is made even more urgent.



**Teh v Kelsom.***Kuantan Civil Appeal No. 1 of 1939**(Reported in 1939 M.L.J. 289)*

*Joint cultivation of husband's property by husband and wife—death of husband—distribution.*

Appeal from the decision of the Collector of Land Revenue, in a Distribution Suit.

Kelsom was the widow of a man to whom she was married at Beserah in Pahang in or about 1928. Prior to the marriage he was possessed of three pieces of land two of which were at that time practically uncultivated.

Husband and wife cultivated and planted these two pieces of land by their joint labour.

On the death of her husband Kelsom claimed that before the inheritance was distributed a share in each of these pieces should be allotted to her as *harta sapencharian*.

Held, on appeal, that since the property had been acquired prior to marriage it could not be *harta sapencharian* but that either spouse could claim *upah* for work done on the other's property.

RAJA MUSA, Ag. J.—I order that this matter be referred back to a different Collector for retrial.

*Harta sapencharian* is only applicable to property acquired during marriage and not to property acquired before marriage.

Where property has been acquired before marriage and either spouse has put in money or labour to that property, *harta sapencharian* does not apply but either spouse is entitled to claim what is known as *upah* which is remuneration for work done.\*

This matter is remitted back to the Collector for him to ascertain whether or not the respondent is entitled to claim *upah* and if so how much.

No costs of the appeal.

[See the Note on Conflicting Decisions, page 105]

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\* Apparently referring to *Ramah v. Alpha*, IV F.M.S. Rep. 179, Malay Family Law, p. 22.



**Sali v Achik***N.S. Civil Appeal No. 2 of 1940.**(1940 F.M.S. Rep. p. 273)*

In a Distribution Suit the Collector must consider the personal law of the deceased.

The absence from a title of the words "Customary land" (which means ancestral land) does NOT prevent devolution according to the *adat*.

The rule *pembawa kembali* applied.

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HORNE J. This appeal is from the order made by the Collector in an application for the distribution of a small estate. It is submitted that the Collector has disregarded the local custom governing the distribution of the land of the deceased. The Collector granted Letters of Administration and ordered the administrator to sell the land and divide the proceeds among the persons entitled to share according to Mohammedan law. In his view there can be no question of applying a local customary rule because the land title had not been endorsed "Customary land".

The Collector's order was made before Cussen J. gave judgment in *Re Haji Mansur*, (p. 99 *supra*) and followed the decisions previously given by this Court to the effect that if the title is not endorsed "Customary land" the Collector should order a distribution according to Mohammedan law.

The first decision to this effect was given in 1934 by Mudie, J. in *Kutai v Taensah* (p. 83 *supra*). There are two lines of decision, one commencing in 1934 and the other from some uncertain date in the past which conforms generally to the view taken by Cussen, J. Before 1934 there had been decisions recognizing *adat* rules of succession given by Acton, J. in 1926 in *Re Kulup Kidal*, (Customary Law of Rembau, p. 92) and Burton, J., in 1928 in *Re Haji Pais* (p. 61 *supra*). According to Acton, J., in *Kulop Kidal* the custom of Rembau had been previously recognized by the Court; he referred to *Innes* on Land Registration.

If Cussen, J. is right the Collector's decision is wrong and the Collector ought not to have held that he could not order a distribution according to the local rules because the title was not endorsed "Customary land".

In my opinion if it was so endorsed the Collector would be unable to deal with the land under the Probate and Administration

Enactment, for both section 176 of that Enactment and section 10(iv) of the Customary Tenure Enactment exclude such property from any of the provisions of the Probate and Administration Enactment.

Although I adopt the decision of Cussen, J. in *Re Haji Mansur* I do not adopt his reasons and as there is a conflict of decisions I prefer to approach the matter in my own way.

In my opinion the Customary Tenure Enactment has no application to the question before the Collector. Upon examination of the interpretation section and section 4, it appears to me that the enactment only applies to land which has already become ancestral land (*harta pesaka*). It does not deal with land which, according to the custom, changes its character from acquired to ancestral property upon a devolution consequent upon the death of the acquirer or first owner. "Customary land" is thus given a limited meaning and applies to land with an endorsed title. The endorsement of the words "Customary land" upon the entry in or the extract from the mukim register can be made in two cases:—

- (a) on proof that the land is occupied subject to the custom and that the entry is in name of a female member of the tribe—section 4(i) ;
- (b) the title of land alienated by the State to a female member of the tribe may be so endorsed with her consent, that is to say, that her acquired property may with her consent be earmarked as ancestral without waiting for a devolution—section 4(ii).

Such an endorsement is to be taken as "conclusive proof" that the land in question is "occupied subject to the custom"; this latter phrase must be taken as meaning ancestral land. If acquired land is to be included under the description "occupied subject to custom" then the acquired land of a female registered proprietor could be endorsed under section 4(i) while yet under section 4(ii) when she acquires it from the State it can only be endorsed at her option. Again the expression "Customary land" used in section 176 of the Probate and Administration Enactment must I think also be construed as ancestral land. For otherwise that section will not fit in with the Customary Tenure Enactment.

The Collector was therefore wrong in holding that the absence of an endorsement precluded him from considering the evidence before him.

If the rules of Mohammedan law are then to be applied it must be for some reason other than the lack of endorsement. The Col-

lector seems inclined to the view that Mohammedan law applies because the land was alienated to the deceased by the State, is under rubber, and the deceased, the alinee, is a male. But as all acquisitions of unalienated land must derive from the State this hardly seems a reason. On the other hand he finds that three lembagas consider that the devolution of the land in question should be governed by the *adat*. One of them, I might add, is the lembaga of Sri Lemak tribe, four female members of which stand to receive 234/936 of the proceeds of sale if the Mohammedan law rule governs the distribution and nothing if the customary rule applies.

It seems to me that in such a case as this the Collector must consider what is the personal law of the deceased or as it is put in section 179 of the Probate and Administration Enactment "the rules for the distribution of the estate of an intestate applicable in the case of the deceased". I think myself that the expression "the rules of Mohammedan law as varied by local custom" used in the Distribution Enactment (Chapter 71) might describe this law, it being understood that the dictionary meaning of "to vary" includes "to substitute". At present the body of law so described is in a state of flux or of development. It is sometimes difficult to ascertain. It varies in different districts. It is compounded of Mohammedan law and custom in different degrees when examined in relation to different subjects. Custom in turn is affected by Mohammedan law and by the extension of opportunities for the acquisition of property. Some of this law is found in works of authority on Mohammedan law and some is found in enactments (*e.g.* Customary Tenure, Mohammedan Marriage and Divorce, and Mohammedan Offences) and some in recorded decisions (Taylor's Collection of Cases in Customary Law of Rembau, 1929)\* and in the Law Reports; but a considerable amount still remains oral customary law and is supposed to be known to the lembagas.

Nevertheless from a consideration of the sources mentioned, it appears that although there have been disputes as to succession of property in the past, it was not held authoritatively until 1934, eight years after the passing of the present Customary Tenure Enactment, that the unvaried rules of Mohammedan law were to be applied to all property other than that which had already become ancestral. I agree with Cussen, J. that if the Legislature desire that result they must say so in clear terms. If they desired it by the Customary Tenure Enactment it is strange that eight years had to elapse before the Court gave a decision that the Enactment effected that desire.

In this case I think the local rule was sufficiently proved as a customary rule, which is followed in that district in variation of

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\* And see also Malay Family Law, May 1937.

Mohammedan law in all similar cases, by the three *lembagas* who gave expert evidence before the Collector. The rule is that where a male member of the tribe acquires property, upon apportionment at the time of dissolution of a previous marriage, and marries again that property is *harta pembawa*. If it is declared at the time of the subsequent marriage, it goes to his nearest female relative under the *adat* on his death.

It is agreed by all parties at the hearing of the appeal that if that rule is adopted the land must go to the appellant.

The appeal is allowed and the Collector's order set aside and it is ordered that the land be transmitted to the appellant. No order as to costs.

The matter now being in the hands of the Collector, he is entitled under section 4(i) of the Customary Tenure Enactment to endorse the title "Customary land".

[*Note.* The question of endorsement is discussed further in the next case.]

### Haji Hussin v Maheran.

*Kuala Pilah Distribution Suit No. 7 of 1940*

*Civil Appeal No. 8 of 1941*

A decision by the Collector under section 4 of the Customary Tenure Enactment that the land is not "occupied subject to the custom" means that the land is *not*, at the date of the decision, ancestral property. Such property is distributable under the Small Estates law according to the personal law of the deceased, *viz* "Mohammedan law as varied by Malay custom". If on such transmission the property becomes ancestral the Collector should then inscribe the title "customary land".

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This was a dispute as to the succession to *harta dapatan*. The history of the matter was as follows.

Haji Tahir was married for many years to his wife Rantai and they had two daughters, Mintan and Maheran. During this marriage Tahir also had a second wife—a breach of the rule of monogamy which inevitably made it impossible for the rules *chari bahagi, dapatan tinggal, pembawa kembali* to be applied normally. All parties were members of scheduled tribes.

Haji Tahir acquired, by alienation or purchase, five lots of "new" rubber land, all in his own name. He did not acquire any other land in the name of either wife. The second wife also had two daughters; she was divorced but what property was given to her does not appear. The marriage to Rantai subsisted until the death of Tahir in 1923. Rantai treated all the land as *charian laki-bini* of her marriage and she continued to enjoy it, without dispute and (unfortunately) she did not promptly apply for transmission of the titles. She died in 1924. Maheran was then barely of age and the other three daughters were minors. She applied for transmission of the property but the sisters of Haji Tahir lodged an objection and a serious dispute arose. After a long struggle a settlement was reached with the aid of the *Kathi*. A small share in land was allotted to one sister of the deceased and on Maheran paying \$100 each to his other three sisters the remainder was transmitted to the four daughters. The total value of the estate and the shares of the daughters are not stated but it appears that Maheran and Mintan received larger shares than the daughters of the divorced wife.

It was afterwards stated that the *Kathi* arranged this *pakat* on the basis of the *hukum shara* but it is difficult to refer the claim of the sisters to anything other than *harta pembawa*. They said, years later, that they had intervened to protect the younger daughters, Maheran being too young to manage the property. Maheran said they had taken advantage of her youth and inexperience.

It is extremely likely that the *pakat* was not a consistent application of either *adat* or *shara* but rather a compromise between the two, inexplicable in theory but hammered out to meet the practical needs of a special case. *Kathis* often in fact apply *adat* but they naturally do not admit it in terms. They call it *shara* saying that "Custom is based on the Koran".

In 1929 Mintan was married to one Haji Hussin. They had one daughter and in 1932 Mintan died. Haji Hussin returned to his mother, i.e. he was *jeput*. Maheran paid the funeral expenses, managed Mintan's property, paid off her antenuptial debts which exceeded \$500 and maintained the child till she died, 8 months later. There was no dispute at that period and no application for transmission of the titles was made for eight years.

In 1940 Haji Hussin applied for distribution of Mintan's property according to Mohammedan law. He claimed  $\frac{1}{4}$  in his own right as her husband and  $\frac{1}{2}$  by succession to the child, conceding the remaining  $\frac{1}{4}$  to her full sister Maheran. He admitted at the outset that all the property belonged to Mintan before he married her and was *harta dapatan* in *adat*. Maheran claimed

the whole estate on the basis of its origin as *charian laki bini* of her parents.

The Penghulu Luak Muar gave evidence that Maheran was entitled to the whole of Mintan's estate—*dapatan tinggal*. Seven other lembagas all agreed that the devolution ought to be according to *adat* and that Maheran, the sister of the deceased, was the sole customary heir.

The Land Office records shewed that the previous transmission was based on *pakat*.

The Collector held that the land was *harta dapatan* and as the titles were not inscribed "customary land" he adjourned the distribution proceedings and directed Maheran to apply under section 4 of the Customary Tenure Enactment for a declaration that the lands were occupied subject to the custom.

After a further enquiry in which the history of the land, as set out above, was investigated, a different Collector declared that the lands were not occupied subject to the custom. He thought the previous transmission had been according to *hukum shara* and remarked:—

"This is one of the many cases which have given rise to violent disputes, in which the property is *dapatan* in *adat* and the marriage is without surviving issue."

The former Collector then resumed the distribution proceedings.

He held that the property was *dapatan* to Haji Hussin, and that "as there was no surviving child of the marriage the popular feeling locally is that the property should be returned to the customary heir of the deceased."

He accordingly transmitted the whole estate to Maheran.

Haji Hussin appealed.

HORNE, J.—Mintan binti Haji Mohamed Tahir died in 1932 leaving a husband (the appellant), a daughter who died seven months later and a sister of the full blood, Maheran (the respondent). Mintan at the time of her death was the registered proprietor of four small plots of rubber in undivided shares with Maheran and one plot in sole ownership. Maheran has been in possession of the lands since her sister's death. The appellant did nothing until 1940 when he applied to the Collector of Land Revenue for distribution of the estate of Mintan, claiming 1/4 as widower and 1/2 as heir to his deceased daughter.\* The respondent objected and claimed the whole under the *adat*.

\* A clerical error in the judgment has been corrected after comparison with the original memorandum of appeal.



The Collector stopped the distribution proceedings and, misunderstanding in some way my judgment in *Sali v Achek* (*supra* p. 107) proceeded to hold an enquiry under section 4 of the Customary Tenure Enactment. In *Sali v Achek* I pointed out that the only land which can be described as "customary land" is land the title to which has been endorsed "customary land" and that the expression "customary land" meant land which was ancestral property, *harta pesaka*, as opposed to land which was acquired property, *harta charian*.

Mr. Rintoul (for the appellant) now contends that as there has been an enquiry under section 4 of the Customary Tenure Enactment in which there has been a decision that the land is not customary land, the Collector cannot in continuing the proceeding under the Probate and Administration Enactment order that the land be distributed according to any rule of *adat* relating to property. This is an attempt to restore the view which was current from 1934, see *Kutai's case*, 3 M.L.J. 251 (and p. 83 *supra*) until Cussen. J. took a contrary view in the case of *Haji Mansur*, 9 M.L.J. 110 (and *supra*, p. 99). Mr. Rintoul submits that as the decision under section 4 is conclusive proof that the land is *not* customary land and as in face of that the Collector now in effect declares that it *is* customary land there are now in existence two contrary decisions. But this attempt to impale the Collector or myself upon a dilemma fails when the expression "occupied subject to the custom" is used and understood in relation to the subject matter. A decision under section 4 that the land is not "occupied subject to the custom" means that the land is not, at the time the decision is given, ancestral property. Such a decision is therefore "conclusive proof" that the land is "acquired property". It is open to the Collector in proceedings under the Probate Enactment to transmit the acquired property of the deceased in accordance with the personal law of the deceased. The law is Mohammedan law as varied by local custom. Under the Probate and Administration Enactment the Collector is concerned with the law applicable to a person. Under the Customary Tenure Enactment, section 4, he is concerned with the character of a certain kind of property *viz.* land. But under the custom it must be remembered that there is no difference between land and other property. All is property and is either acquired property, *harta charian* etc., or ancestral property, *harta pesaka*. There is, therefore, no conflict between the decision under section 4 and the decision under section 179 of the Probate and Administration Enactment now under appeal.

It is, however, now sought to set up in this appeal another reason for a transmission according to *shara*, *viz.* that where a person has acquired the property by a transmission under Mohammedan law it is no longer acquired property. But as there is no endorse-



ment "customary" on the title—that the land is or has become "ancestral"—the land can, in the Malay conception, be nothing else but "acquired property".

If the Collector's order stands the property in question is something different to what it was when the enquiry under section 4 was held for the Collector's order transmitting the land to the person entitled under the *adat* changes the land from being acquired property to ancestral property. It would now be competent to endorse the title "Customary land".

That was what I suggested in the concluding words of the judgment in *Sali v Achek supra* which are:—

"The matter now being in the hands of the Collector, he is entitled under section 4(i) of the Customary Tenure Enactment to endorse the title 'Customary land'".

There is nothing in the judgment in Kulin's case, Civil Appeal No. 3 of 1940 (not reported) which was delivered earlier, to conflict with this judgment. There was merely an order to re-hear in that case and the reference to section 4 is unnecessary to the decision.

The Customary Tenure Enactment, as Cussen, J. points out in *Re Haji Mansur*, partially replaces the unwritten customary law. It is the duty of the Collector to give effect to that Enactment. That is the reason of the above cited concluding words. One of the objects of that Enactment is to prevent property in land going out of and away from the custom. Consequently I consider that where the Collector has made a decision such as the present one which under the *adat* converts acquired property into ancestral property he is bound to hold the enquiry under section 4 and endorse the Entry in and Extract from the Mukim Register "Customary land". A contrary view would result in persons using the *adat* when it suits them to establish claims by succession and then remain free of that part of the custom which is embodied in the Enactment, a result which can never have been intended.

The appeal is dismissed with costs and the Collector's order will stand.

### Commentary.

It is clear that although Maheran claimed to inherit the land under the *adat*, as *charian laki-bini* of her parents, she did not want it to be treated as ancestral in the sense of making it subject to restrictions on transfer. This is a fairly general feeling but the effect of the Enactment of 1926 is that if such a claimant

succeeds to the land under the *adat* it must be made "customary" on transmission to her.

On the Enactment as it stands and on the authorities, Horne, J. is right but it is doubtful whether this does not go further than the true *adat* and it is certain that it goes further than is acceptable nowadays even to many female members of the tribes who are probably stronger supporters of the *adat* than the men.

Amendment of the law is therefore urgently needed.

## GENERAL OBSERVATIONS.

### Opinions on policy

The next document in the Secretariat file is a memorandum by the then Resident. As this is only a tentative draft it would be unfair to Mr. Ham to analyse it in detail. His main points are that the question in Haji Mansur's case (p. 94 *supra*) might have been referred to the State Council and that the people should be allowed to choose which system they prefer. Now this latter point has been made by several earlier Residents and has had considerable effect on their opinions. It is a very important point and I will now deal with it. It is usually founded on the minute by Mr. Wolff, in which he says:—

"It is of the utmost importance that the Government should avoid bringing any pressure upon the people to follow one or the other of these two systems. It is for the people themselves to say which system they prefer".

As I have shewn, a later Resident while claiming to follow that minute, did in fact put pressure on the Assistant District Officer, Rembau, to apply the Mohammedan law against the unanimous wish of the State Council, embodied in a formal minute to which he himself was a party, that "new" land should devolve according to *adat temenggong*.

As regards the latter point, what is meant by "letting the people choose"? If it means that the two families, necessarily of different tribes, are to be left to choose in each individual case which system they will follow, then the idea cannot be too roundly condemned. It is obvious that in every such case each party will choose the system which gives him the greater share. Such a policy will repeatedly provoke the very conflict which it is sought to avoid.

What then does it mean?

Surely it means this—that the Government ought to find out which system the people do, on the whole, prefer and then frame procedure under which that system can be smoothly applied.

How are we to ascertain which system they prefer? Asking the *lembagas* has been tried and, as Mr. Pengilley says, it is impossible to get a satisfactory answer because each man has at the back of his mind some actual or imminent case in which his own interest in property is at stake.

Further, and this is more important, none of these men have sufficient power of analysis to frame the general questions in their own minds. Let us be realistic. Go to any village inn in England where a land owner has lately died intestate and ask the blacksmith and the local farmers what the rules of succession are. How many of the Residents and District Officers in Negri Sembilan could give a clear answer to the same question? How then shall we proceed? Anything in the nature of a plebiscite or referendum would be most undesirable even if the people were literate enough for it to be effective. Any further enquiries of individuals would merely lead to further conflict of opinion in which we should be more puzzled than the Egyptians in their fog.

In my opinion there is sufficient evidence already before us and it is for that reason that I made this elaborate analysis of the cases and of the papers which the Law Officers submitted to me.

I found myself on the minute of the State Council, *supra*, p. 72 and I say confidently that the whole of the present trouble is due to the fact that the measures taken do not implement that decision. We do not want further debate. All we need is to give effect to that minute. It cannot be done without some further legislation but I do not think it need be controversial.

What the people really want is as follows:—

- (A) To preserve the matrilineal rules of succession to ancestral property and the tribal restrictions on its transfer;
- (B) To preserve their freedom of transfer of newly acquired property;

On these two propositions I think there is complete unanimity.

There remain the questions:—

- (a) How do they want newly acquired property to devolve?
- (b) When will it cease to be “new”?

(c) How do they want it to devolve then?

These questions are more complicated and cannot all be answered with the same certainty but there is general agreement that the people want:

- (C) Sons and daughters to inherit the property jointly acquired by their parents;
- (D) Surviving husbands to inherit property acquired during the marriage, at any rate if there are no children of the marriage.

There is also a very great preponderance of evidence that the people generally want:—

- (E) To maintain the principles of separate property of spouses, *harta pembawa* and *harta dapatan*.

There is occasional conflict of opinion as to whether the children or the tribal relatives should inherit this class of property but this conflict is more apparent than real for the following reasons.

The general rule of *adat* is that such property devolves on the nearest female relative in the tribe of the deceased; that means the sister of a man but it means the daughter of a woman.

Also, in either case, there must be a proper division of the property on the dissolution of the marriage, whether by death or divorce, before it can be stated whether the property is wholly separate or partly joint (as in the cases of Teriah and Haji Mansur, *supra*, pp. 90 & 94).

As to when the property ceases to be "new" the immediate practical importance of this question is technical and artificial and and is due to the excessive rigidity of the Customary Tenure Enactment of 1926 which

- (a) prevents inheritance by a man (except as a life interest) and
- (b) prevents free transfer of land by *e.g.* the widow of the acquirer.

In both these respects the Enactment is stricter than the *adat* and this is one of the causes of the present impasse, (which I may point out, was foreseen by my predecessors in Rembau, especially Messrs de Moubray and Pengilley, both of whom said the Enactment of 1926 would not work. The Government decided to test it in practice before considering amendment).

On the general question, when acquired land ceases to be "new" as a matter of *adat* there is little, if any, evidence in these papers. Mr. Caldecott argued that acquired land never could become ancestral which is a patent absurdity due to the use of ill-considered terms. "Error", said Bentham "is never so difficult to be destroyed as when it has its roots in language. Every improper term contains the germ of fallacious propositions and presents a frequently invincible obstacle to the discovery of truth". The term "Customary land" provides a striking example of this. It has also been said that "customary land" ought to mean lands originally cleared by the immigrant Menangkabau tribes as opposed to lands acquired by them by purchase. These lands are, of course, ancestral now but they cannot have been ancestral property of the immigrants.

The Enactment of 1909 did not define the term "customary land". The Enactment of 1926 defined it as land the title to which has been marked "customary land". Neither Enactment contains any indication as to the circumstances in which a title held by a member of a tribe ought to be so marked. It was left entirely to the Collector to decide that question from other information. There is no doubt that in its original form the only object of the Enactment was to protect the tribal rights and options over ancestral land but it was in practice impossible at that date (even if it had been correct in *adat*, which is doubtful) to distinguish between lands cleared and lands purchased, centuries earlier. Hence the junior land officials evolved the rough working rule that any land which, before the mukim registers were established, had been comprised in an "Old Title" was "customary". This was sound so far as it went but no one has ever asserted that the converse held, that is, that lands not derived from Old Titles ought not to be treated as "customary" for the purpose of the Enactment. In any case there was never any systematic attempt to go through the registers and mark even those entries derived from Old Titles as customary. That has not been completed even now. The amendment of 1919 authorising the registration as "customary" of land newly granted by the Government was on its face inconsistent with the idea that "customary" in the Enactment meant "ancestral" and this led some Judges to hold that it therefore meant any land the devolution of which was governed by the custom. This amendment also had the effect of making some acquired lands subject to the options, which is, in certain cases, an oppressive extension of the custom. Then other Judges went further and held that lands not registered as "customary" could not devolve according to the custom. This is directly contrary to the custom and Cussen J. and Horne J. have held that it is not the true construction of the statute. The primary and main cause of the impasse is that question-begging definition

of the term "customary land" which is in itself ambiguous and is also misleading in that it confounds inheritance with tenure.

I have therefore avoided the use of this expression as far as possible and I would suggest to those officers who will have to advise the Government in this matter that they should do so too.

As a matter of plain English one can acquire property by inheritance but the expression "acquired property" as used in this discussion means "acquired otherwise than by inheritance"—that is, earnings or *chadian*. Now acquired property must cease to be "acquired", in this sense, when it passes to a new owner by inheritance. Also acquired property must have become ancestral when it has passed from mother to daughter through six or eight generations. Again property acquired by a man and inherited by his mother or sister is plainly not ancestral as a matter of English. The question is whether, and if so when, acquired property ought to be made subject to tribal restrictions on transfer. Parr and MacKray say that this occurs on inheritance by the children of the acquirer and Kahar's case (Customary Law of Rembau, p. 129) supports this. It is not, however, possible to lay it down that on the first transmission the title should be inscribed "customary" because this would disable a man who had put land in his wife's name from selling freely his own earnings after her death.

There is not enough authority to frame even a tentative rule.

The remedy is to go back to the more flexible procedure which was in operation before 1928. This would also have the great practical advantage of distributing the whole property of a deceased in one proceeding instead of two.

I would remark here that the multiplicity of proceedings arising from devolution under two different statutes has led to serious difficulty in Malacca and in 1940 the Government of the Colony were considering the introduction of a Small Estates Distribution Ordinance to consolidate such cases.

There is general consensus of opinion that appeals from the District Officers in customary cases can more suitably be heard by the Resident sitting with the Ruling Chief, than by the Supreme Court but in view of constitutional changes since the war the question of appeals may require further consideration.

#### **Differences between the three tribal Districts.**

Throughout the correspondence there are references to the difficulties of legislating so as to suit all three of the tribal dis-



tricts, Kuala Pilah, Jelebu and Tampin which is divided into two sub-districts, Rembau and Tampin proper, each having its own territorial Chief.

Now there are differences but in my opinion they are smaller than is commonly thought. Rembau is often represented as the most aggressively tribal. Rembau may be the most aggressive but it is in Jelebu that tribal feeling is strongest.

For some reason connected with the early history of the Survey Department it was decided in Jelebu to issue Grants under the Registration of Titles Enactment for the ancient tribal rice lands and orchards. The Grant is the most "indefeasible" form of title and has never been made subject to any legislative restriction on transfer. Also the District Officer never had (until 1928) any jurisdiction to transmit land held under Grant to the successors of a deceased holder, no matter how small the area; all Grants were dealt with by the Supreme Court. On paper, therefore, Jelebu was the place where disintegration of the tribes would be most likely to set in. But the law means little unless the people support it and conversely (but equally, be it noted) few people will take advantage of a lax law if public opinion sets a more rigid standard. Jelebu is a natural enclave, tucked away in the hills. The valley was fairly well filled with a homogeneous population. For many years they have had the blessing of a statesman-like Datoh. The tribal restrictions on transfer were in fact generally observed and those ancient holdings are still transmitted to the tribal heiresses, although many of them are held under Grants. Further, the letters and minutes by the District Officer (Mr. W. C. S. Corry) shew clearly that acquired lands generally devolve according to the *adat perpateh*. It does not appear that the Mohammedan fractions have ever been applied and no case of conflict has yet been cited from Jelebu.

The position in Rembau and Tampin was and is generally similar to that in Jelebu but it may be doubted whether the tribal restrictions would have been so well observed if they had not been reinforced by statutory procedure. Acquired land had never devolved according to the Mohammedan fractions until 1930; since then they have been applied in a few isolated cases.

The Kuala Pilah District is different politically because the Yang di-per-tuan Besar, the Ruler of the State, lives there. Although Negri Sembilan is a single State in the legal sense it was in the early eighteenth century, and still is, an actual federation of minor Malay States and the Ruler, though he ranks in European eyes as the equal of the Sultans of other Malay states is not a Sultan and is never so styled. He has sometimes been described as a *primus inter pares* but though this may not be quite accurate the



fact remains that there are four ruling Chiefs in his State who are not dependent on him because they are elected by the tribes. They have no analogue in the other States and this is solely because the the Negri Sembilan Malays have retained their tribal organisation which is essentially democratic, whereas the other States are autocratic. Sri Menanti therefore must always see in the *adat* something which reduces the power and glory of the Ruler.

There are two sub-divisions of tribes living near the Ruler's residence at Sri Menanti who are not subject to a lembaga but form a sort of "royal manor" of which the Ruler himself is lembaga. It is natural that among these sub-divisions the ordinary customs of inheritance should have been modified. No details are given but it is possible that in those divisions inheritance does now, in part, follow the Mohammedan law; whether they have any tendency to extend the practice among their neighbours does not appear. It is certain, however, that some of the District Officers have applied the Mohammedan fractions, as in the case of Haji Pais (p. 58 *supra*) to acquired land although it is recorded that as regards ancestral land Kuala Pilah is "even more fanatical than Rembau". There are two reasons for this. Every District Officer on his first arrival in a tribal district finds in the *adat* something new and baffling. His first contact with it is probably in a disputed succession case where, without previous experience of the matter, it is impossible even to understand the evidence clearly. The lembagas are apt to talk in proverbs and most of the information which has been published is so vague and general as to be of little use in actual litigation. The natural reaction of the newcomer is therefore to say:—"Why cannot we do it as we always did in such a place? Why not abolish the *adat* or at least let it die out?" Moreover, the officer in charge of the district where the Ruler resides communicates with the Ruler directly, not through a Secretariat: he is in constant personal contact with the Ruler and the Chiefs of his entourage and he naturally tends to assimilate their view of the *adat*. These factors, together with a necessarily lay attitude to the general principles of law and the very ambiguous wording of the relevant statutes (which were in fact almost entirely drafted by laymen) have combined to form the opinion held by some, but by no means all, of the District Officers of Kuala Pilah that in their district the *adat* was confined to certain specified, or at least specifiable, lands and that other lands devolved according to the Mohammedan law. Now there is some ground for their view. There is no doubt that during the last twenty five years some estates have been "distributed" according to the Mohammedan fractions but Mr. Pengilly's memorandum and the cases in these papers show that with regard to the frequently occurring questions of separate property, *harta pembawa* and *harta dapatan*, the principles of *adat* are still generally applied.

This is perhaps the most convenient point to deal with an important matter to which there are many references in the papers. The Probate and Administration Enactment, section 184(iii) requires the Collector to give effect to any division *agreed upon by the beneficiaries* and failing agreement to *distribute* according to the law and custom applicable to the deceased.

Now some people, influenced possibly by Mr. Wolff's minute (page 115 *supra*) have taken this to mean that the *adut* can be applied if the beneficiaries so desire but that in the absence of an agreed division they must apply the Mohammedan fractions. The most curious thing about this view is that in a certain type of case, it will work. As Mr. Pengilley has pointed out, where the property is the *charian* of a marriage, and there are children of the marriage (and these are the most usual circumstances) the property descends to the children under either system. The only difference is that under Mohammedan law each son may take twice the share of each daughter but this is not compulsory; the strictest Mohammedans agree that it is proper for brothers and sisters to share equally if they so arrange among themselves and even in non-tribal districts they frequently do so. Therefore, in a very considerable proportion of actual distributions, it is possible to give effect to a division agreed upon by the beneficiaries without any question of law or custom being raised. Lawyers never appear in these cases at first instance and very few peasant cultivators take up the study of comparative jurisprudence as a hobby. But where the property was acquired during a previous marriage, or where the marriage was childless, the interested parties are not brothers and sisters but relations "in-law" and step-children and questions of joint and separate property necessarily arise. In such cases there is little hope of agreement even in countries without tribal complications and hence the necessity, in all countries, for some rule of distribution. In these cases therefore there are competing claimants and no prospect of agreement between the parties. But this does not necessarily mean that there is no prospect of agreement among the beneficiaries. Who are the beneficiaries? To say that in the absence of agreement among all claimants the estate must be distributed according to the Mohammedan law is to beg the question without applying the Statute. The section requires distribution according to the personal law. Therefore the section requires that the District Officer should first ascertain what the personal law is; then he must ascertain who are the beneficiaries according to that law; then, in default of agreement among that class, he must distribute according to that law.

There is no case in which this has been done by a District Officer and no case in which it has been explained step by step by a Judge. It is, I think, clear that Acton J. in Kulop Kidai, Burton J. in Haji Pais, Cussen J. in Haji Mansur and Horne J. in Maheran's

case and in *Sali v Achik* all proceeded on this principle. But the Residents and some of the District Officers deny the whole foundation. They do not realise that they are fighting against the one section of the local Statute, the Probate and Administration Enactment, 184(iii), which in plain terms expresses a substantive principle. They assume, without deciding, that the Mohammedan fractions are the law, which is not correct anywhere in this country because even in the non-tribal States spouses have special rights. (*Teh v Kelsom*, *supra* p. 106, and see also p. 50 *supra*).

In theory they want to avoid conflict between the two systems but their practice actively provokes the conflict in a considerable proportion of the cases. The idea that the peasants regard the *adat* as an irreligious anachronism is entirely without foundation. The fact is that the Chief Kathis and Kathis constantly propound rules of *adat*, often calling them Mohammedan law (see page 49 *supra*). The "Sri Menanti" school have yet to produce one instance of a Malay of any class who has said:—"According to the *adat* I could claim a small share but I am a Mohammedan so I do not claim".

The solution which had the unanimous support of the State Council (page 72 *supra*) is to apply *adat temenggong*.

### Adat Temenggong.

The practical difficulty is that the *adat temenggong* never has been consistent and definite and there is no body of rules or cases which would be workable under modern conditions. It has been suggested that the land office case books should be examined and analysed and the cases classified. This, however, would be a long and laborious task requiring the collaboration of a number of skilled persons. I do not think it could be effectively undertaken within any assignable period. Therefore, in order to implement the decision of the State Council, it is in my opinion necessary to frame rules embodying the *adat temenggong* for ordinary cases.

In view of Section 188 of the Probate and Administration Enactment which makes "any information the Collector himself may possess" available as evidence of custom it might suffice for the State Council to adopt such rules by means of a declaratory resolution like that of Perak. (Malay Family Law, p. 70).

Such rules should not be too rigid and in my opinion there would be no real difficulty in drafting them. I have prepared a first outline (p. 127) which will make my meaning clear and would I think furnish a satisfactory basis for discussion.

### Mohammedan Law of Descent.

Finally I desire to make some further observations regarding the Mohammedan law.

The Malays embraced the Islamic faith centuries ago and it is probable that they adopted those parts of the Mohammedan law which relate to marriage and divorce very soon after their religious conversion. It is certain, however, that they did not adopt the Mohammedan law of property, even in Perak and Selangor where there was no tribal organisation. Long Jaffar's case in 1886 (Wilkinson p. 37) was not an exceptional or isolated case. The mukim registers in any Malay district will show that a very large number of holdings were from the first in the names of women and that the widow frequently inherited the whole of her husband's estate.

I give place to no man in my respect and admiration for the Prophet and for the system of law which he inspired. His influence was benign, progressive and civilising. He checked slavery and raised the status of women. In the immensely important matter of humanity to the deserted wife he set a standard which the English law did not approach till 1938. Above all, he was tolerant, as is shewn by the fact that some of his most famous followers, including Shafei, expressly permitted their disciples to differ from them on minor issues. It is true that the rules of distribution became settled centuries ago but there is a distinction between law and religion and for my part I cannot see that a Perak Malay of today is a better Mohammedan than his grandfather because the practice in succession cases has been changed or that a Negri Sembilan Malay of tomorrow would be a better Mohammedan if a similar change were imposed upon him. There are two reasons for this. In the first place the change was not brought about by the people themselves. It was an artificial result of the introduction of registered titles, as I have explained, at page 49. Secondly the change is merely a change in the direction of the Mohammedan law and not in truth a change to the Mohammedan law.

The fundamental principle of the *faraid* is to divide up the property among the heirs giving to each his or her agreed or ascertained share. The system was devised for a community in which moveable property was the more important. There is a good illustration of this in Sir Ronald Wilson's book on Mohammedan law. An estate was to be divided thus:—A, one-half; B, one-third; C, one-ninth. The estate consisted of 17 camels. The heirs were puzzling how to cut up a camel into 18ths when a learned man came along and offered to help. He said, "It is quite easy; you require another camel, borrow mine." They did so and took nine, six and two camels respectively. The maulwi

then took back his own camel and rode on. The story seems to assume that all the camels were of equal value. It does, however, illustrate the principle that the estate is to be really divided, each heir receiving his specific and separate share. The Minhaj et Talibin goes further, giving rules for dividing up land and making adjustments in money where the portions cannot be so arranged as to have the correct values.

This, however, is in the long run a very harmful practice. It is a fact that the dividing and subdividing of holdings has brought about very serious impoverishment of the peasantry in the Middle East.

But when it is sought to apply this process to land registered under the 'Torrens' system, the results become fantastic. It is enacted that the District Officer shall distribute the estate. What actually happens? For the purpose of the case the estate consists, not of the property of the family but of the interests registered in the name of the deceased, perhaps two lots of three acres each and a half share in a third lot. The wife may have another lot in her own name. If so, it should be taken into consideration but, apart from a family agreement, this is very seldom done. The District Officer usually asks the Kathi an abstract question such as—"What is the division between a widow, a son, two daughters and the father?". The Kathi is not concerned with the property of which the estate consists and works out the shares something like this:—

Widow .. .. .	1/8th
Father .. .. .	1/6th
Son .. .. .	Double share
Daughters .. .. .	Single share each

He reduces these to a common denominator:—

Widow .. .. .	12
Father .. .. .	16
Son .. .. .	34
Daughter .. .. .	17
Daughter .. .. .	17
	<hr/>
	96
	<hr/>

Each daughter therefore inherits 17/96 of each of the first two lots and an undivided 17/192 share of the third and as the younger daughter is probably an infant her shares must be protected by caveats.

Any one who turns over the leaves of a mukim register in Perak will find many instances more extreme than this. So far no serious attempt has been made to check this appalling complication which, be it emphasised, is not a true application of the Mohammedan law. The Mohammedan law requires division. These are undivided shares. It is therefore not quite the same as morcellement, *i.e.* splitting into very small holdings, but its practical results are almost as bad. It is obvious that in such cases some of the co-owners will live at a distance from the land. Are the remainder to cultivate the land and keep accounts of the costs and profits? Is a peasant family to be turned into a kind of private company? Moreover the cumulative effect of these caveats and unmanageable fractions is to impose a restriction on sale of the land far more onerous than that which the *adat* imposes on ancestral land.

The only other course is to order sale of the land and distribute the proceeds proportionately to the shares. So far as I know this has been attempted only once and then unsuccessfully. It could rarely be an acceptable solution because few peasant families have enough ready money for the larger sharers to buy out the smaller and if the whole of the land is sold out of the family all parties will be dissatisfied. Also it very seldom happens that a holder dies at a time favourable for the sale of his particular land.

It is, of course, true that the matrilineal descent has resulted in a degree of morcellement, and a great many of the ancestral *sawahs* and *kampongs* in Negri Sembilan have been surveyed in lots of less than one acre but no great harm has resulted. The actual morcellement is less than it appears because many an owner holds several lots. This is an advantage because she can sell the whole of a small lot without selling the whole of her land. A person who holds 17/192 of each of two lots has great difficulty either in selling any part of her holding or in deriving any benefit from it. In my opinion remedial legislation is long overdue in the non-tribal States and I do not think the difficulty of framing such legislation is as great as it may appear (Malay Family Law, page 74).

However that may be, I do urge that such a travesty of the religious law ought not to be imposed on the people of Negri Sembilan, who do not want it, and among whom the registration of a given lot of land in undivided shares among members of different tribes will inevitably lead to additional difficulty and friction.

## RECOMMENDATIONS.

### Consolidation of Proceedings.

For all these reasons therefore I recommend adopting the following principles:—

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- A. One estate — one petition;  
B. One decision — one appeal;  
C. Rules of descent according to *adat temenggong*.

The legislative measures to give effect to A and B are very simple. The Probate and Administration (Small Estates) Enactment should be amended thus:—

- (a) Repeal section 176;  
(b) Add to section 189 a proviso that if the deceased was a member of a tribe, any appeal should be heard by the Resident and Chief;  
(c) Consequential amendments to section 188 etc.

Sections 10 and 25 of the Customary Tenure Enactment 1926, should be repealed. This would allow the principles of *harta pembawa*, *harta dapatan* and *charian* to be applied in proper cases without necessarily inscribing the register and so making the land subject to restrictions on transfer.

With regard to C, the following suggestions are submitted.

#### Draft.

##### *Rules of Descent where the deceased was a member of a tribe.*

1. (i)—In all cases the Collector will ascertain, by recording evidence, the total property of the family of the deceased and in making an order for distribution he will have regard to any partial distribution which may have been made in the lifetime of the deceased.

(ii) Where any part of the property was acquired during a marriage, he will also have regard to any property acquired during that marriage which is not part of the estate of the deceased.

(iii) Where any specific part of the estate represents property in more than one category, so that more than one party has an interest in it, and it is not expedient that the property should devolve in undivided shares, the Collector may direct that such property shall devolve on one party on condition of payment to another party of a sum of money to be specified in the Order and may postpone registration until such sum has been paid or may require one party to execute a charge in favour of the other party to secure payment of the said sum.

*Example*—The deceased was a married woman. A piece of land was *harta dapatan* of the marriage but during the marriage



its value was increased by the joint efforts of husband and wife. To the extent of such increase the property is *charian laki-bini*. The collector assesses the interest of the surviving husband in the land at \$100.-.

The Collector may order the land to be registered in the name of the sister of the deceased conditionally on payment of \$100.- to the husband and may if necessary require the sister to charge the land to him for \$100.-.

(iv) Where the funeral expenses of the deceased are properly chargeable on certain property and the party on whom that property ought to devolve has not paid the funeral expenses, the Collector may require that party to pay the funeral expenses as a condition of succeeding to the property.

2. In making an order for distribution the Collector shall have regard to the following principles but in any particular case he may, after recording his reasons, make a special order if justice shall so require.

### 3. *Descent of Ancestral Property.*

(a) Ancestral property devolves on the daughters of the deceased in equal shares.

(b) The share of a deceased daughter devolves on her female descendants.

(c) In the absence of direct female descendants, ancestral property devolves on the female descendants of the nearest common ancestress in equal shares, *per stripes*, but subject to the rights, if any, of the sons and brothers of the deceased to statutory life occupancy and with due regard to any partial distribution of the family property which may have been made.

### 4. *Devolution of Acquired Property.*

(a) *Harta charian bujang* devolves on the nearest female relatives in the tribe of the deceased.

(b) *Harta charian laki-bini* of a childless marriage devolves on the surviving spouse.

(c) On the death of the husband *harta charian laki-bini* devolves on the wife with remainder to the issue of the marriage.

(d) On the death of the wife *harta charian laki-bini* is divided between the widower and the issue of the marriage, provided that if the widower is not *jeput* to his own tribe, such property devolves on the widower with remainder to the issue of the marriage.

5. *Devolution of Separate Property.*

(a) *Harta pembawa* returns to the widower or to his nearest female relatives in his own tribe.

(b) *Harta dapatan* remains with the widow or with her nearest female relatives in her own tribe.

6. *Adoption.*

A relative by adoption has the same rights as a relative by birth.

7. *Guardianship.*

The proper guardian of an infant is the nearest competent female relative in the tribe of the infant. The normal order of preference is:—(a) the mother; (b) an elder sister; (c) mother's sister; (d) mother's mother.

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